

COPY

SHOOK, HARDY & BACON L.L.P.
 R. Scott LaSalle (SBN: 188287)
 Jamboree Center
 5 Park Plaza, Suite 1600
 Irvine, California 92614-2546
 Telephone: 949.475.1500
 Facsimile: 949.475.0016

Attorneys for Defendant C. R. Bard, Inc.

FILED
 2009 DEC 14 PM 1:37
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 SANTA ANA

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

DEBRA BROUSSARD and ROBERT
 BROUSSARD, wife and husband,

Plaintiffs,

vs.

CALDERA MEDICAL, INC., a
 California corporation; C. R. BARD,
 INC. a New Jersey corporation; DOES
 ONE through FIFTEEN,

Defendants.

Case No. CV09-9153 DDP(EX)

**NOTICE OF REMOVAL OF
 ACTION BY DEFENDANT C. R.
 BARD, INC.**

[Filed Concurrently with Corporate
 Disclosure Statement; Certification of
 Interested Parties; Notice of Related
 Cases; and Civil Cover Sheet]

Complaint filed: May 21, 2009

Pursuant to 28 U.S.C. § 1446, Defendant C. R. Bard, Inc. ("Bard") files this Notice of Removal to remove this civil action from the Superior Court of the State of California, Los Angeles County, wherein it was filed as Case No. LC085621, to the United States District Court for the Central District of California, and shows unto this Honorable Court as follows:

1. On or about May 21, 2009, Plaintiffs Debra Broussard and Robert Broussard, individuals, filed an unverified complaint ("Complaint") in the Superior Court of the State of California, Los Angeles County, in the civil action styled *Debra Broussard and Robert Broussard, wife and husband v. Caldera Medical, Inc. a*

1 *California corporation; C.R. Bard, Inc, a New Jersey corporation; and Does One*
2 *through Fifteen*, Case No. LC085621. True and correct copies of all process and
3 pleadings served upon Bard are attached hereto as Exhibit A and are incorporated
4 herein by reference. Plaintiff's complaint alleges that Bard designed and
5 manufactured Avaulta® surgical mesh which was defective. (*See Complaint*, ¶ 38).
6 As a result of its use in Debra Broussard's surgery on June 15, 2006, Plaintiffs
7 allegedly sustained injury and assert claims for products liability, negligence, breach
8 of warranty, fraud, negligent misrepresentation, violation of State Consumer Fraud &
9 Deceptive Trade Practices Act, and loss of consortium. (*See Complaint* ¶ 39 and
10 generally). Plaintiffs seek compensatory damages, pain and suffering, lost wages, loss
11 of earning capacity, restitution, loss of consortium, and punitive damages, together
12 reasonably exceeding \$75,000. (*See Complaint*, prayer.)

13 2. A process server served Bard's registered agent with a certified copy of
14 the referenced Complaint on May 22, 2009.

15 3. Plaintiffs filed a dismissal of Caldera Medical, Inc. on November 23,
16 2009. (*See Dismissal*).

17 4. Without defendant Caldera Medical, Inc., this action could have been
18 originally filed in this Court pursuant to 28 U.S.C. §§ 1332, in that there is complete
19 diversity between Plaintiff and Bard and the amount in controversy exceeds the sum
20 or value of \$75,000, exclusive of interest and costs.

21 5. This Notice of Removal is filed within thirty (30) days after receipt by
22 Bard of Request for Dismissal of Caldera Medical, Inc. pursuant to Rule 6(a) of the
23 Federal Rules of Civil Procedure and 28 U.S.C. § 1446(b).

DIVERSITY OF CITIZENSHIP

6. Complete diversity of citizenship exists between the parties. Plaintiffs Debra Broussard and Robert Broussard, individuals, are citizens of, resides in, and is domiciled in Louisiana. (Complaint ¶ 1).

7. Bard is a New Jersey corporation with its principal place of business in New Jersey. Pursuant to 28 U.S.C. § 1332(c)(1), Bard is a citizen of New Jersey. Bard is not, and was not at the time of the filing, a citizen of the State of California within the meaning of the Acts of Congress relating to the removal of cases., despite plaintiffs' attempting to list Bard as residing at Caldera Medical, Inc.'s address in Agoura Hills, California. (Complaint ¶¶ 2 and 5).

8. For purposes of removal, the citizenship of defendants sued under fictitious names is disregarded. 28 U.S.C. § 1441(a).

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000

9. Plaintiff states claims for products liability, negligence, breach of warranty, fraud, negligent misrepresentation, violation of State Consumer Fraud & Deceptive Trade Practices Act, and loss of consortium.. Plaintiffs allege that Debra Broussard has suffered significant injuries through the implantation of a defective surgical device and seeks to recover compensatory damages, pain and suffering, lost wages, loss of earning capacity, restitution, loss of consortium, and punitive damages, together reasonably exceeding \$75,000. (*See* Complaint). Thus, Plaintiff's claim for damages exceeds the requisite amount in controversy for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

THE OTHER REMOVAL PREREQUISITES HAVE BEEN SATISFIED

10. A copy of this Notice of Removal is being filed with the Clerk of the Superior Court of California, Los Angeles County, as provided by law, and written notice is being sent to Plaintiffs' counsel.

11. The prerequisites for removal under 28 U.S.C. § 1441 have been met.

12. The allegations of this Notice are true and correct and within the jurisdiction of the United States District Court for the Central District of California, and this cause is removable to the United States District Court for the Central District of California.

13. If any question arises as to the propriety of the removal of this action, Bard respectfully requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

WHEREFORE, Bard, desiring to remove this case to the United States District Court for the Central District of California, being the district and division of said court for the county in which said action is pending, prays that the filing of this Notice of Removal shall effect the removal of said suit to this Court.

Dated: December 14, 2009

SHOOK, HARDY & BACON, LLP

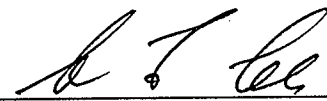
By: 
R. Scott LaSalle
Attorneys for Defendant C. R.
BARD, INC.

EXHIBIT A

12:50 PM 5/22/09

SUM-100

SUMMONS
(CITACION JUDICIAL)**NOTICE TO DEFENDANT:**
(AVISO AL DEMANDADO):

CALDERA MEDICAL, INC., a California corporation; C.R. BARD, INC., a New Jersey corporation; DOES ONE through FIFTEEN

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DEBRA BROUSSARD and ROBERT BROUSSARD, wife and husband

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**ORIGINAL FILED**
Northwest District

MAY 21 2009

LOS ANGELES
SUPERIOR COURT**"VIA FAX"**

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court, Van Nuys Courthouse East
6230 Sylmar Ave
Van Nuys, California 91401

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Robert F. Arentz / Lowell W. Finson

Phillips & Associates, 3030 North Third Street, Suite 1100, Phoenix, AZ 85012 / Tel: (602) 258-8900

DATE:

(Fecha)

Clerk, by

(Secretario)

H. Marquez

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **C.R. BARD, INC., a New Jersey corporation**
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

[SEAL]

JOHN A. CLARKE MAY 21 2009

ORIGINAL FILED
Northwest District

MAY 21 2009

LOS ANGELES
SUPERIOR COURT

1 Robert F. Arentz, SBN 114159
2 Lowell W. Finson, AZ # 010872
3 PHILLIPS & ASSOCIATES
4 3030 North Third Street, Suite 1100
5 Phoenix, Arizona 85012
6 Tel: (602) 258-8900
7 Fax: (602) 288-1671
8 lowellf@phillipslaw.ws

9 Attorneys for Plaintiffs

"VIA FAX"

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF LOS ANGELES

12 NORTHWEST DISTRICT

13 DEBRA BROUSSARD and ROBERT
14 BROUSSARD, wife and husband,

15 Plaintiffs,

16 vs.

17 CALDERA MEDICAL, INC., a California
18 corporation; C.R. BARD, INC., a New
19 Jersey corporation; DOES ONE through
20 FIFTEEN,

21 Defendants.

CASE NO.

LC085621

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

1. Strict Products Liability-Failure to Warn
2. Strict Liability
3. Negligence
4. Breach of Implied Warranty
5. Breach of Express Warranty
6. Fraud
7. Fraud by Concealment
8. Negligent Misrepresentation
9. Violation of State Consumer Fraud &
Deceptive Trade Practices Act
10. Loss of Consortium

22 Plaintiffs, for their cause of action against the Defendants, allege as follows:

23 **PARTIES, JURISDICTION AND VENUE**

24 1. DEBRA BROUSSARD and ROBERT BROUSSARD (hereinafter,
25 "Plaintiffs") are and were at all times alleged herein, wife and husband, and citizens and
26 residents of the State of Louisiana. Use of the singular term "Plaintiff" refers to Plaintiff
DEBRA BROUSSARD unless the context requires otherwise.

1 2. Defendant CALDERA MEDICAL, INC. (hereinafter, "CALDERA") is and
2 was a corporation formed under the laws of the State of California, with its principal
3 place of business at 28632 Roadside Drive, Suite 260, Agoura Hills, California 91301.

4 3. At all times alleged herein, CALDERA includes and included any and all
5 parents, subsidiaries, affiliates, divisions, franchises, partners, joint venturers, and
6 organizational units of any kind, their predecessors, successors and assigns and their
7 officers, directors, employees, agents, representatives and any and all other persons acting
8 on their behalf.

9 4. At all times alleged herein, CALDERA conducted regular and sustained
10 business in Louisiana and California, by selling and distributing its products in Louisiana
11 and California, as described below.

12 5. Defendant C.R. BARD, INC. (hereinafter, "BARD"), at all times alleged
13 herein, is and was a corporation formed under the laws of the State of New Jersey, with
14 its principal place of business at 28632 Roadside Drive, Suite 260, Agoura Hills,
15 California 91301.

16 6. At all times alleged herein, BARD includes and included any and all
17 parents, subsidiaries, affiliates, divisions, franchises, partners, joint venturers, and
18 organizational units of any kind, their predecessors, successors and assigns and their
19 officers, directors, employees, agents, representatives and any and all other persons acting
20 on their behalf.

21 7. At all times alleged herein, BARD conducted regular and sustained
22 business in Louisiana and California, by selling and distributing its products in Louisiana
23 and California, as described below. By these same activities, BARD has sufficient
24 contacts within the State of California, to subject it to the jurisdiction of this Court.

25 8. Defendants DOES ONE through FIFTEEN are persons, agents, servants,
26 employees, corporations, partnership or other business entities whose true names are

1 unknown by Plaintiffs at the present time. Plaintiffs allege, upon information and belief,
2 that DOES ONE through FIFTEEN are citizens and residents of the State of California, or
3 are domiciled within the State of California, or conduct regular and sustained business
4 within the State of California, to subject them to the jurisdiction of this Court. Each of
5 these Defendants negligently assisted the named Defendants in carrying out the
6 allegations as set forth below. Alternatively, DOES ONE through FIFTEEN were agents
7 and/or servants of one or more named defendants, were acting within the course and
8 scope of their employment and/or agency at the times alleged herein. If and when the true
9 identifies of such persons, servants, employees, corporations, partnership or other
10 business entities are known to Plaintiffs, they will seek leave of Court to amend the
11 Complaint to reflect such true names, together with appropriate charging allegations.

12 9. At all times alleged herein, reference to any named Defendant, or use of the
13 collective term "Defendants", includes the named Defendant and Defendants DOES ONE
14 through FIFTEEN, or all named Defendants herein and Defendants DOES ONE through
15 FIFTEEN, respectively.

16 10. At all times alleged herein, Defendants identified herein as, or discovered to
17 be, corporations or other business entities were acting by and through officers,
18 employees, agents, and contractors, who were acting within the course and scope of said
19 office, employment, agency, or contractual authority.

20 FACTUAL BACKGROUND

21 11. CALDERA designs, researches, develops, manufactures, tests, markets,
22 advertises, promotes, distributes, and sells products that are sold to and marketed to treat,
23 among other things, pelvic organ prolapse and stress urinary incontinence. One such
24 product, the Caldera T-Sling™ (hereinafter, "T-Sling"), is an implanted synthetic surgical
25 mesh device purported to provide support for the urethra and bladder neck to keep the
26 urethra closed and prevent urine leakage. It is specifically promoted as an innovative,

1 minimally invasive procedure with minimal local tissue reactions, minimal tissue trauma
2 and minimal pain and a short recovery period.

3 12. BARD designs, researches, develops, manufactures, tests, markets,
4 advertises, promotes, distributes, and sells products that are sold to and marketed to treat,
5 among other things, pelvic organ prolapse and stress urinary incontinence. One such
6 BARD product, the Avaulta® system (hereinafter, "Avaulta"), is an implanted synthetic
7 surgical mesh device purported to correct and restore normal vaginal structure secondary
8 to pelvic organ prolapse.

9 13. The T-Sling and Avaulta devices are collectively referred to herein as the
10 "Mesh Devices".

11 14. Upon information and belief, prior to 2006, CALDERA sought and
12 obtained Food and Drug Administration ("FDA") approval to market the T-Sling and/or
13 its monofilament polypropylene mesh component under Section 510(k) of the Medical
14 Device Amendment.

15 15. Upon information and belief, prior to 2006, BARD sought and obtained
16 Food and Drug Administration ("FDA") approval to market the Avaulta device and/or its
17 monofilament polypropylene mesh component under Section 510(k) of the Medical
18 Device Amendment.

19 16. Section 510(k) allows marketing of medical devices if the device is deemed
20 substantially equivalent to other legally marketed predicate devices without formal review
21 for safety or efficacy.

22 17. On or about June 15, 2006, Plaintiff was implanted with the T-Sling and
23 two Avaulta devices for repair of pelvic organ prolapse, rectocele, cystocele and urinary
24 incontinence, by Natchez Morice, M.D., at Teche Regional Medical Center, in Morgan
25 City, Louisiana.

26 18. Since implantation of the Mesh Devices, Plaintiff has suffered from, among

1 other problems, erosion, shrinkage and extrusion of mesh from one or more of the Mesh
2 Devices, causing urinary retention, severe persistent pain, including dyspareunia, and
3 numerous surgical procedures to remove the Mesh Devices.

4 19. As early as 2004 until the present, Defendants have received numerous
5 reports of adverse events filed by physicians and patients pertaining to their synthetic
6 mesh systems, and were or should have been aware of many similar reports concerning
7 substantially equivalent products by other manufacturers. The most frequent complaints
8 were erosion, extrusion, infection, hardening of the mesh, chronic pain and worsening
9 dyspareunia. Studies show the rate of mesh erosion was 13% accompanied by worsening
10 dyspareunis rates as high as 63%. Analysis of the first 100 vaginal mesh procedures
11 revealed a 17.5% erosion rate.

12 20. The 2004 World Health Organization 3rd International Consultation on
13 Incontinence reported mesh repairs have an unacceptably high rate of complication that
14 includes erosion, extrusion, infection, sepsis, and dyspareunia. Because of the poor risk/
15 benefit ratio of the vaginal mesh systems it was recommended the synthetic mesh systems
16 not to be used until more approved clinical trials of outcome were conducted.

17 21. At all times relevant herein, the Mesh Devices were widely advertised and
18 promoted by Defendants as a safe and effective treatment for pelvic organ prolapse,
19 rectocele, cystocele and urinary incontinence. Said Defendants, and each of them,
20 minimized the risks posed to patients with implantation of the Mesh Devices.

21 22. At all times relevant herein, Defendants knew their Mesh Devices were
22 defective and knew the defect was attributable to the erosion, hardening and shrinkage of
23 the mesh material. The Defendants, and each of them, knew that the Mesh Devices were
24 made to allow tissue infiltration and that removal is not advised. Complications from the
25 mesh and from mesh removal are life-changing and can be irreversible. This information
26 was known to the Defendants, and each of them, prior to implantation of the Mesh

1 Devices in Plaintiff in 2006.

2 23. At all times relevant to this action, the Defendants, and each of them, knew
3 that synthetic mesh systems, and specifically the Mesh Devices, were not safe for the
4 patients for whom they were prescribed and implanted, because the mesh eroded and
5 otherwise malfunctioned, and therefore failed to operate in a safe and continuous manner,
6 causing injuries from erosion, extrusion, infection, sepsis, chronic foreign body invasion,
7 dense adhesions and worsening dyspareunia. Removal of eroded or infected mesh brings
8 a high rate of life-threatening complications including permanent disfigurement and
9 hemorrhage. Complete removal can take multiple surgical interventions in the operating
10 theater and results in scarring on fragile compromised pelvic tissue and muscles

11 24. The Defendants' representations regarding the performance of the Mesh
12 Devices, including, but not limited to, the consistency of the performance of the Mesh
13 Devices and their safety and reliability, were untrue as set forth in the published literature
14 and adverse event reports. The Defendants, and each of them, failed to disclose to
15 physicians, patients or Plaintiffs that their Mesh Devices were subject to erosion or scar
16 tissue formation causing the injuries herein described.

17 25. At all relevant times herein, Defendants, and each of them, continued to
18 promote the Mesh Devices as safe and effective even when no clinical trials had been
19 done supporting long or short term efficacy.

20 26. In doing so the Defendants, and each of them, concealed the known risks
21 and failed to warn of known or scientifically knowable dangers and risks associated with
22 the Mesh Devices for pelvic organ prolapse, rectocele, cystocele and urinary
23 incontinence.

24 27. As a result of the defective Mesh Devices, Plaintiff has suffered severe
25 physical and emotional injuries, including but not limited to, multiple surgical procedures,
26 painful scarring and worsening and continuing dyspareunia.

1 28. At all relevant times herein, Defendants, and each of them, failed to provide
2 sufficient warnings and instructions that would have put Plaintiff and the general public
3 on notice of the dangers and adverse effects caused by implantation of the Mesh Devices
4 including, but not limited to, mesh erosion, dense adhesions, worsening dyspareunia,
5 chronic pain, infection, sepsis, permanent disfigurement and multiple surgeries for mesh
6 removal.

7 29. The Mesh Devices as designed, manufactured, distributed sold and/or
8 supplied by the Defendants, and each of them, was defective as marketed due to
9 inadequate warnings, instructions, labeling and/or inadequate testing in the presence of
10 Defendants' knowledge of product failure and serious adverse events.

11 30. At all times herein mentioned, the officers and/or directors of the
12 Defendants named herein participated in, authorized and/or directed the production and
13 promotion of the aforementioned products when they knew of the hazards and dangerous
14 propensities of said products, and thereby actively participated in the tortuous conduct
15 that resulted in the injuries suffered by Plaintiff.

16 31. Due to the acts of all Defendants individually or in concert, the information
17 regarding the nature and/or the facts leading up to and/or causing the injuries alleged
18 herein was not known by Plaintiffs nor reasonably could have been known prior to
19 October 20, 2008, when the FDA released a public health notification of the serious
20 complications associated with transvaginal placement of surgical mesh devices, like the
21 Mesh Devices at issue here, for treatment of, *inter alia*, pelvic organ prolapse, rectocele,
22 cystocele and urinary incontinence.

23 **FIRST CAUSE OF ACTION**
24 **[Strict Products Liability - Failure to Warn]**

25 32. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each
26 and every allegation contained in the preceding paragraphs.

1 33. At all times mentioned herein, the Mesh Devices are, and were, dangerous
2 and presented a substantial danger to patients who were implanted with the Mesh
3 Devices, and these risks and dangers were known or knowable at the time of distribution
4 and implantation in Plaintiff in 2006. Ordinary consumers would not have recognized the
5 potential risks and dangers the Mesh Devices posed to pelvic reconstruction patients
6 because their uses were specifically promoted to improve the health of such patients. The
7 Mesh Devices were used in a way reasonably foreseeable to the Defendants, and each of
8 them, by Plaintiff. The Defendants, and each of them, failed to provide warnings of such
9 risks and dangers to Plaintiff and her medical providers as described herein.

10 34. As a result of the Mesh Devices, Plaintiff suffered debilitating injuries from
11 the synthetic mesh including mesh erosion, shrinking, hardening, chronic pain and
12 worsening dyspareunia leading to the need for dangerous and serious vaginal surgery;
13 required and will continue to require healthcare and services; has incurred and will
14 continue to incur medical and related expenses; has suffered and will continue to suffer
15 mental anguish, diminished capacity for the enjoyment of life, a diminished quality of
16 life, chronic debilitating pain, and other such damages.

17 35. In doing the acts herein described, the Defendants, and each of them, acted
18 with oppression, fraud and malice, and Plaintiffs are therefore entitled to punitive
19 damages to deter the Defendants, and each of them, and others from engaging in similar
20 conduct in the future. Said wrongful conduct was done with advance knowledge,
21 authorization and/or ratification of an officer, director and/or managing agent of the
22 Defendants.

23 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set
24 forth.

25 / / /

26 / / /

SECOND CAUSE OF ACTION
[Strict Liability]

36. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

37. The Mesh Devices were manufactured and/or supplied by the Defendants, and each of them, and were placed into the stream of commerce by these Defendants, and each of them, in a defective and unreasonably dangerous condition in that the foreseeable risks exceeded the benefits associated with their design of formulation.

38. Alternatively, the Mesh Devices manufactured and/or supplied by the Defendants, and each of them, were defective in design or formulation, inadequate warning or instruction and/or inadequate post-marketing warnings or instructions in that when they were placed into the stream of commerce, they were unreasonably dangerous; they were more dangerous than an ordinary consumer would expect and more dangerous than other forms of pelvic organ prolapse, rectocele, cystocele and urinary incontinence repair/correction.

39. As a result of the defective unreasonably dangerous condition of the Mesh Devices manufactured and/or supplied by the Defendants, and each of them, Plaintiff was caused to suffer the herein described injuries and damages.

40. The Defendants, and each of them, acted with conscious and deliberate disregard of the foreseeable harm caused by the Mesh Devices.

41. The Defendants, and each of them, thereby acted with fraud, malice, oppression and a conscious disregard for the Plaintiff and general public's safety, who accordingly requests that the trier of fact, in the exercise of sound discretion, award additional damages for the sake of example and for the purpose of punishing the Defendants, and each of them, for their conduct, in an amount sufficiently large to be an example to others and deter the Defendants, and each of them, and others from engaging

1 in similar conduct in the future. The aforesaid wrongful conduct was done with the
2 advance knowledge, authorization, and/or ratification of an officer, director, and/or
3 managing agent of the Defendants.

4 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set
5 forth.

6 **THIRD CAUSE OF ACTION**
7 **[Negligence]**

8 42. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each
9 and every allegation contained in the preceding paragraphs.

10 43. The Defendants, and each of them, and their representatives were
11 manufacturers and/or distributors of the Mesh Devices. At all times herein, the
12 Defendants, and each of them, had a duty to properly manufacture, compound, test,
13 inspect, package, label, distribute, market, examine, maintain supply, provide proper
14 warnings and prepare for use and sell the aforesaid products.

15 44. The Defendants, and each of them, so negligently and carelessly
16 manufactured, compounded, tested, failed to test, inspected, failed to inspect, packaged,
17 labeled, distributed, recommended, displayed, sold, examined, failed to examine and
18 supplied the aforesaid products, that they were dangerous and unsafe for the use and
19 purpose for which they were intended, that is, repairing/correcting pelvic organ prolapse,
20 rectocele, cystocele and urinary incontinence, in Plaintiff and others similarly situated.
21 As a result of the carelessness and negligence of the Defendants, Plaintiff had the Mesh
22 Devices implanted in the manner intended by the manufacturer, and, as a result, Plaintiff
23 suffered the injuries and damages described herein.

24 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set
25 forth.

26 / / /

FOURTH CAUSE OF ACTION
[Breach of Implied Warranty]

45. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

46. The Defendants, and each of them, impliedly warranted that their Mesh Devices, which the Defendants, and each of them, designed, manufactured, assembled, promoted and sold to Plaintiff was merchantable and fit and safe for ordinary use. The Defendants, and each of them, further impliedly warranted that their Mesh Devices were fit for the particular purpose of repairing/correcting pelvic organ prolapse, rectocele, cystocele and urinary incontinence, respectively.

47. The Defendants' Mesh Devices were defective, unmerchantable, and unfit for ordinary use when sold, and unfit for the particular purpose for which they were sold, and subjected Plaintiff to severe and permanent injuries. Therefore, the Defendants, and each of them, breached the implied warranties of merchantability and fitness for a particular purpose when their synthetic mesh systems were sold to Plaintiff, in that the Mesh Devices are defective and have failed to function as represented and intended.

48. As a result of the Defendants', and each of them, breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiff has sustained and will continue to sustain the injuries and damages described herein and is therefore entitled to compensatory damages.

49. After Plaintiff was made aware her injuries were a result of the Mesh Devices, said Defendants, and each of them, had ample and sufficient notice of the breach of said warranty.

WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

/ / /

FIFTH CAUSE OF ACTION
[Breach of Express Warranty]

50. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

51. The Defendants, and each of them, expressly warranted to Plaintiff and/or her authorized agents or sales representatives, in publications, and other communications intended for medical patients, and the general public, that the Mesh Devices were safe, effective, fit and proper for their intended use.

52. Plaintiff and Plaintiff's physicians reasonably relied upon the skill and judgment of the Defendants, and upon said express warranty, in using the aforesaid Mesh Devices. The warranty and representations were untrue in that the products caused severe injury to Plaintiff and were unsafe and, therefore, unsuited for the use in which they were intended and caused Plaintiff to sustain damages and injuries herein alleged.

53. As soon as the true nature of the Mesh Devices, and the fact that the warranty and representations were false, were ascertained, said Defendants, and each of them, had ample and sufficient notice of the breach of said warranty.

WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

SIXTH CAUSE OF ACTION
[Fraud]

54. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

55. The Defendants, and each of them, falsely and fraudulently represented to Plaintiff, her physicians, and to members of the general public that the aforesaid products were safe, effective, reliable, consistent, and better than the other similar pelvic repair procedures when used in the manner intended by the manufacturer. The representations by said Defendants, and each of them, were in fact, false. The true facts include, but are

1 not limited to that the aforesaid products were not safe to be used for repairing/correcting
2 pelvic organ prolapse, rectocele, cystocele and urinary incontinence, and were, in fact,
3 dangerous to the health and body of Plaintiff.

4 56. When the Defendants, and each of them, made these representations, they
5 knew that they were false. The Defendants, and each of them, made said representations
6 with the intent to defraud and deceive Plaintiff, and with the intent to induce Plaintiff to
7 act in the manner herein alleged, that is to use the aforementioned products for
8 repairing/correcting pelvic organ prolapse, rectocele, cystocele and urinary incontinence.

9 57. At the time the Defendants, and each of them, made the aforesaid
10 representations and Plaintiff took the actions herein alleged, Plaintiff and her physicians
11 were ignorant of the falsity of these representations and reasonably believed them to be
12 true. In reliance upon said representations, Plaintiff was induced to, and did, use the
13 aforesaid product as herein described. If Plaintiff had known the actual facts, she would
14 not have taken such action. The reliance of Plaintiff and her physicians upon the
15 Defendants' representations were justified because said representations were made by
16 individuals and entities who appeared to be in a position to know the true facts.

17 58. As a result of the Defendants', and each of them, fraud and deceit, Plaintiff
18 was caused to sustain the herein described injuries and damages.

19 59. In doing the acts herein alleged, the Defendants, and each of them, acted
20 with oppression, fraud, and malice, and Plaintiff is therefore entitled to punitive damages
21 to deter the Defendants, and each of them, and others from engaging in similar conduct in
22 the future. Said wrongful conduct was done with advance knowledge, authorization
23 and/or ratification of an officer, director and/or managing agent of Defendants.

24 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set
25 forth.

26 / / /

SEVENTH CAUSE OF ACTION
[Fraud by Concealment]

60. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

61. At all times mentioned herein, the Defendants, and each of them, had the duty and obligation to disclose to Plaintiff and to her physicians, the true facts concerning the Mesh Devices; that is, that said products were dangerous and defective, lacking efficacy for their purported use and lacking safety in normal use, and how likely they were to cause serious consequences to users including permanent and debilitating injuries. The Defendants, and each of them, made the affirmative representations as set forth above to Plaintiff and her physicians and the general public prior to the date the Mesh Devices were implanted in Plaintiff, while concealing material facts.

62. At all times herein mentioned, the Defendants, and each of them, willfully, and maliciously concealed facts as set forth above from Plaintiff and her physicians, and therefore, Plaintiffs, with the intent to defraud as herein alleged.

63. At all times herein mentioned, neither Plaintiff nor her physicians were aware of the facts set forth above, and had they been aware of said facts, they would not have acted as they did, that is, would not reasonably relied upon said representations of safety and efficacy and utilized the Mesh Devices for repairing/correcting pelvic organ prolapse, rectocele, cystocele and urinary incontinence. The Defendants' representations were a substantial factor in Plaintiff utilizing the Mesh Devices for repairing/correcting pelvic organ prolapse, rectocele, cystocele and urinary incontinence.

64. As a result of the concealment of the facts set forth above, Plaintiff sustained injuries as hereinafter set forth.

65. In doing the action herein alleged, the Defendants, and each of them, acted with oppression, fraud, and malice and Plaintiff is therefore entitled to punitive damages

1 in an amount reasonably related to Plaintiff's actual damages, and to the Defendants'
2 wealth, and sufficiently large to be an example to others, and to deter these Defendants,
3 and each of them, and others from engaging in similar conduct in the future.

4 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set
5 forth.

6 **EIGHTH CAUSE OF ACTION**
7 **[Negligent Misrepresentation]**

8 66. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each
9 and every allegation contained in the preceding paragraphs.

10 67. At all relevant times herein, the Defendants, and each of them, represented
11 to Plaintiff and her physicians that the Mesh Devices were safe to use for
12 repairing/correcting pelvic organ prolapse, rectocele, cystocele and urinary incontinence,
13 knowing that the Mesh Devices were defective and capable of causing the injuries
14 described herein.

15 68. The Defendants, and each of them, made the aforesaid representations with
16 no reasonable ground for believing them to be true when the data readily available to
17 Defendants, and upon information and belief directly available to defendants in the form
18 of adverse event reports specifically related to the Mesh Devices, showed the Mesh
19 Devices to be defective and dangerous when used in the intended manner.

20 69. The aforesaid representations were made to the physician prescribing the
21 Mesh Devices prior to the date they were prescribed to Plaintiff with the intent that
22 Plaintiff and her physicians rely upon such misrepresentations about the safety and
23 efficacy of the Mesh Devices. Plaintiff and her physicians did reasonably rely upon such
24 representations that the aforesaid product was safe for use for repairing/correcting pelvic
25 organ prolapse, rectocele, cystocele and urinary incontinence.

26 70. The representations by the Defendants, and each of them, to Plaintiffs were

1 false and thereby caused Plaintiff's injuries described herein.

2 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set
3 forth.

4 **NINTH CAUSE OF ACTION**

[Violation of State Consumer Fraud & Deceptive Trade Practices Act]

5 71. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each
6 and every allegation contained in the preceding paragraphs.

7 72. Defendants had a statutory duty to refrain from unfair or deceptive acts or
8 practices in the sale and promotion of the Mesh Devices to Plaintiff.

9 73. Defendants engaged in unfair unconscionable, deceptive, fraudulent and
10 misleading acts or practices in violation of all California and Louisiana consumer
11 protection laws, identified below. Through its false, untrue and misleading promotions of
12 the Mesh Devices and/or local anesthetic products, Defendants induced Plaintiff to
13 purchase and/or pay for the purchase of the Mesh Devices. Defendants misrepresented
14 the alleged benefits and characteristics of said products; suppressed, concealed and failed
15 to disclose material information concerning known adverse effects; misrepresented the
16 quality as compared to much lower-cost alternatives; misrepresented and advertised that
17 they were of a particular standard quality or grade that they were not; misrepresented in
18 such a matter that later, on disclosure of the true facts, there was a likelihood that Plaintiff
19 would have switched to another product and/or chosen not to purchase and/or reimburse
20 for purchase for the product; advertised with the intent not to sell as advertised; and other
21 wise engaged in fraudulent and deceptive conduct.

22 74. Defendants' conduct created a likelihood of, and in fact caused, confusion
23 and misunderstanding. Defendants' conduct misled, deceived and damaged Plaintiff and
24 Defendants fraudulent, misleading and deceptive conduct was perpetrated with an intent
25 that Plaintiff would rely on said conduct by purchasing and/or paying for purchases of
26

1 said product.

2 75. Moreover, Defendants knowingly took advantage of Plaintiff who was
3 reasonably unable to protect her interests due to ignorance of the harmful adverse effects.
4 Defendants' conduct was willful, outrageous, immoral, unethical, oppressive,
5 unscrupulous, unconscionable and substantially injurious to Plaintiff and offends the
6 public conscience.

7 76. As a result of and in reliance of Defendants' violative conduct, Plaintiff
8 purchased and/or paid for purchases of the Mesh Devices that were not made for resale.

9 77. As such, Defendants engaged in unfair competition or deceptive acts or
10 practices in violation of California Business & Professional Code §17200, *et seq.*,
11 California Business & Professional Code §17500, *et seq.* and the Louisiana Unfair Trade
12 Practices Act, La. Rev. Stat. Ann. § 51:1401, *et seq.*, among others.

13 78. As a proximate result of Defendants' misrepresentations and omissions,
14 Plaintiff has suffered ascertainable losses, in an amount to be determined at trial.

15 79. Throughout the period described in this Complaint, Defendants repeatedly
16 engaged in intentional misconduct characterized by trickery, deceit and a wanton, willful,
17 conscious and reckless disregard of the health, rights and interests of the Plaintiff, and in
18 so conducting itself, acted with oppression, fraud, and malice toward the Plaintiff. As a
19 result of Defendants' indifference to and reckless disregard of the health and safety of the
20 Plaintiff, she suffered both physical and economic harm, and all end-payors incurred
21 economic damages. Accordingly, Defendants' conduct was highly reprehensible under
22 controlling Supreme Court punitive damages authority, and Plaintiff is entitled to punitive
23 and/or exemplary damages.

24 80. As a direct and proximate consequence of Defendants' acts, omissions and
25 misrepresentations described herein, the Plaintiff has required and will require healthcare
26 and services; has incurred and will continue to incur medical and related expenses; has

1 suffered loss of wages and a diminished capacity to earn wages in the future; has suffered
2 and will continue to suffer mental anguish, diminished capacity for the enjoyment of life,
3 a diminished quality of life, increased risk of premature death, and other such damages.
4 Plaintiff's direct medical losses and costs include care for hospitalization, physician care,
5 monitoring, treatment, medications, and supplies. Plaintiff will continue to incur such
6 losses in the future.

7 81. Defendants' conduct was committed with knowing, conscious, wanton,
8 willful, and deliberate disregard for the value of human life and the rights and safety of
9 consumers, including Plaintiff, thereby entitling Plaintiff to punitive and exemplary
10 damages so as to punish Defendants and deter them from similar conduct in the future.

11 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set
12 forth.

13 **TENTH CAUSE OF ACTION**
14 **[Loss of Consortium]**

15 **(On behalf of Plaintiff ROBERT BROUSSARD as against all Defendants)**

16 82. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each
17 and every allegation contained in the preceding paragraphs.

18 83. At all times herein mentioned Plaintiffs DEBRA BROUSSARD and
19 ROBERT BROUSSARD were wife and husband.

20 84. As a direct result of Defendants' aforesaid conduct, Plaintiff ROBERT
21 BROUSSARD, suffered a loss of love, affection, solace, moral support and physical
22 assistance in the operation and maintenance of the home, all to his general damage in an
23 amount within the jurisdiction of this court.

24 WHEREFORE, Plaintiffs pray for judgment against Defendants as hereinafter set
25 forth, seeking compensatory damages, the imposition of a constructive trust over and
26 restitution of the monies collected and profits realized by the Defendants to cease such

1 false and misleading advertising in the future, and punitive and exemplary damages
2 together with interest, the costs of suit and attorneys' fees and such other and further
3 relief as this Court deems just and proper.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs demand judgment against the Defendants on each of the
6 above-referenced claims and Causes of Action and as follows:

- 7 a. Awarding compensatory damages to Plaintiffs for past and future
8 damages, including but not limited to pain and suffering for severe and permanent
9 personal injuries sustained by the Plaintiffs, health care costs, medical monitoring,
10 together with interest and costs as provided by law;
- 11 b. For lost wages and loss of earning capacity in an amount to be
12 proven at time of trial together with interest thereon at the highest lawful rate from the
13 date of judgment until paid in full;
- 14 c. For imposition of a constructive trust and restitution;
- 15 d. For Plaintiff Robert Broussard's loss of consortium and marital
16 support, according to proof;
- 17 e. For punitive or exemplary damages and/or exemplary damages for
18 the wanton, willful, fraudulent, reckless acts of the Defendants who demonstrated a
19 complete disregard and reckless indifference for the safety and welfare of the general
20 public and to the Plaintiffs in an amount sufficient to punish Defendants and deter future
21 similar conduct;
- 22 f. For any other causes of action and/or claims as may be compensable
23 under local laws and/or statutes as may apply under the laws in the jurisdiction and venue
24 in which this case will be transferred for trial;
- 25 g. For Plaintiffs' reasonable attorneys' fees;
- 26 h. For Plaintiffs' costs incurred herein together with interest thereon at

1 the highest lawful rate from the date of judgment until paid in full; and

2 i. For such other relief as the Court deems just and proper.

3 Dated: May 21, 2009

Respectfully submitted,

PHILLIPS & ASSOCIATES

By 

Robert F. Arentz, SBN 114159
Lowell W. Finson, AZ No. 010872
3030 North Third Street, Suite 1100
Phoenix, Arizona 85012
Tel: (602) 258-8900
Fax: (602) 288-1632
lowellf@phillipslaw.ws

Attorneys for Plaintiffs Broussard

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs demand a trial by jury on all issues which may be tried by a jury.

14 Dated: May 21, 2009

Respectfully submitted,

PHILLIPS & ASSOCIATES

By 

Robert F. Arentz, SBN 114159
Lowell W. Finson, AZ No. 010872
3030 North Third Street, Suite 1100
Phoenix, Arizona 85012
Tel: (602) 258-8900
Fax: (602) 288-1632
lowellf@phillipslaw.ws

Attorneys for Plaintiffs Broussard

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert F. Arentz, SBN 114159 / Lowell W. Finson, AZ No. 010872 PHILLIPS & ASSOCIATES 3030 North Third Street, Suite 1100 Phoenix, AZ 85012 TELEPHONE NO.: (602) 258-8900 FAX NO.: (602) 288-1632 ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY ORIGINAL FILED Northwest District MAY 21 2009 LOS ANGELES SUPERIOR COURT "VIA FAX" CASE NUMBER: LC085621
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 6230 Sylmar Ave MAILING ADDRESS: CITY AND ZIP CODE: Van Nuys, CA 91401 BRANCH NAME: Northwest District - Van Nuys Courthouse East		
CASE NAME: Debra Broussard, et ux, v. Caldera Medical, Inc., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input checked="" type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 10
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:
May 21, 2009

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CIVIL CASE COVER SHEET

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PIPD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PIPD/WD

Non-PIP/DAWD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PIP/DAWD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller
Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage

Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition Partnership and Corporate Governance (21)

Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

"VIA FAX"

SHORT TITLE:

Debra Broussard, et ux, v. Caldera Medical, Inc., et al.

CASE NUMBER

LC085621

**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 7 ☐ HOURS/ ☒ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.
For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|---|--|
| 1. Class Actions must be filed in the County Courthouse, Central District. | 6. Location of property or permanently garaged vehicle. |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office. |

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input checked="" type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4. (8)
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1., 2., 3.	
Non-Personal Injury/Property Damage/Wrongful Death Tort	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.	
	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review Unlawful Detainer

SHORT TITLE: Debra Broussard, et ux, v. Caldera Medical, Inc., et al.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (08) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6050 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A8115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: Debra Broussard, et ux, v. Caldera Medical, Inc., et al.	CASE NUMBER
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Judicial Review (Cont'd.)

Provisionally Complex
LitigationEnforcement
of JudgmentMiscellaneous Civil
Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6008 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort - Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6180 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

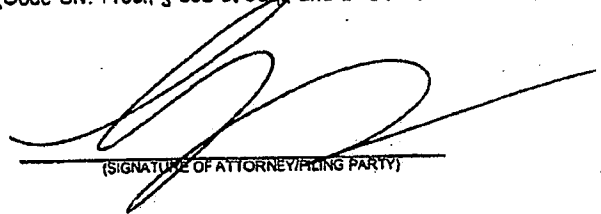
SHORT TITLE: Debra Broussard, et ux, v. Caldera Medical, Inc., et al.	CASE NUMBER
--	-------------

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: 28632 Roadside Drive, Suite 260	
<input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input checked="" type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: Agoura Hills	STATE: CA	ZIP CODE: 91301	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Van Nuys (East) courthouse in the Northwest District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq. and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: May 21, 2009


(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

1 Anthony G. Brazil, Esq. (SBN 84297)
2 Diana Kotler, Esq. (SBN 217235)
3 MORRIS POLICH & PURDY LLP
4 1055 West Seventh Street, 24th Floor
5 Los Angeles, California 90017
6 Telephone: (213) 891-9100
7 Facsimile: (213) 488-1178

8 Attorneys for Defendant,
9 CALDERA MEDICAL, INC.

ORIGINAL FILED
LOS ANGELES SUPERIOR COURT

AUG 14 2009

JOHN A. CLARKE, CLERK

BY E. VINCE CRUZ, DEPUTY

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES, NORTHWEST DISTRICT

13 DEBRA BROUSSARD and ROBERT
14 BROUSSARD,

15 Plaintiffs,

16 v.

17 CALDERA MEDICAL, INC. a California
18 corporation; C.R. BARD, INC, a New Jersey
19 corporation; and DOES 1-15, inclusive,

20 Defendants.

Case No.: LC085621
Complaint Filed: May 21, 2009

Assigned to Hon. Michael Harwin
Dept. NW-M

DEFENDANT CALDERA MEDICAL,
INC.'S PEREMPTORY CHALLENGE OF
THE HONORABLE MICHAEL HARWIN
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE SECTION 170.6

21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that pursuant to California Code of Civil Procedure section 170.6,
23 Defendant CALDERA MEDICAL, INC. ("Defendant") hereby exercises a peremptory challenge with
24 respect to the Honorable Michael Harwin, the judge to whom the trial of this action has been assigned.
25
26
27
28

1 This challenge is based upon the attached declaration of counsel for defendant.
2

3 Dated: August 12, 2009

MORRIS POLICH & PURDY LLP

4
5 By: 

Anthony G. Brazil

Diana Kotler

7 Attorneys for Defendant,
8 CALDERA MEDICAL, INC.
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DECLARATION OF DIANA KOTLER

I, Diana Kotler, declare and state as follows:

1. I am an attorney at law licensed to practice before all the courts of California, and I am an attorney in the law firm of Morris, Polich & Purdy, LLP, attorneys of record for Defendant CALDERA MEDICAL, INC. ("Defendant"). I am familiar with the facts, pleadings, and records in this action, and if called upon to testify I could and would competently testify as follows:

2. Defendant was served with plaintiffs DEBRA BROUSSARD and ROBERT BROUSSARD's ("Plaintiffs") Complaint via personal service on May 21, 2009.

3. On August 13, 2009, Defendant made its first appearance in this matter by filing a Stipulation Between Plaintiffs And Defendant Caldera Medical, Inc Regarding Dismissal Of Certain Causes Of Action And Punitive Damages Claims As Against Caldera Medical, Inc.. Accordingly, this peremptory challenge pursuant to California Code of Civil Procedure section 170.6 is timely.

4. The Honorable Michael Harwin, the judge before whom the trial of the aforesaid action is pending or assigned is prejudiced against Defendant or their attorneys or the interests of Defendant or their attorneys so that the declarant cannot or believes she cannot have a fair and impartial trial or hearing before such judge.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on August 12, 2009.



Diana Kotler

Debra & Robert Broussard v. Caldera Medical, Inc., et al.
 Los Angeles County Superior Court, Northwest District
 Case No. LC 0875621

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 1055 West Seventh Street, 24th Floor, Los Angeles, California 90017.

On August 14, 2009, I served the foregoing document, described as "**DEFENDANT CALDERA MEDICAL, INC.'S PEREMPTORY CHALLENGE OF THE HONORABLE MICHAEL HARWIN PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 170.6**" on the interested parties in this action by placing ☐ the original ☒ a true copy of enclosed in separate sealed envelopes to the following addresses:

Robert F. Arentz, Esq.
 Lowell W. Finzon, Esq.
Lowell@phillipslaw.ws
 PHILLIPS & ASSOCIATES
 20 East Thomas Road, Suite 2600
 Phoenix, AZ 85012
 Tel: (602) 258-8900 / Fax: (602) 288-1671

R. Scott LaSalle, Esq.
 SHOOK, HARDY & BACON, L.L.P.
 Jamboree Center
 5 Park Plaza, Suite 1600
 Irvine, CA 92614-8502
 Tel: (949) 475-1500 / Fax: (949) 475-0016
Attorneys for Defendant C.R. BARD, INC.

Attorneys for Plaintiffs DEBRA BROUSSARD and ROBERT BROUSSARD

☒ **BY U.S. MAIL** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.


I am "readily familiar" with Morris Polich & Purdy LLP's practice of collection and processing correspondence for mailing. Under that practice documents are deposited with the U.S. Postal Service on the same day which is stated in this Proof of Service, with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date stated in this Proof of Service.

☐ **BY OVERNIGHT MAIL** I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE** I caused the above-referenced document to be transmitted via facsimile from (213) 488-1178 to the parties as listed on this Proof of Service. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the state of California, that the above is true and correct.

Executed on August 14, 2009, at Los Angeles, California.


 Mineeh P. Lapid

1 Anthony G. Brazil, Esq. (SBN 84297)
Diana Kotler, Esq. (SBN 217235)
2 MORRIS POLICH & PURDY LLP
1055 West Seventh Street, 24th Floor
3 Los Angeles, California 90017
Telephone: (213) 891-9100
4 Facsimile: (213) 488-1178

5 Attorneys for Defendant,
CALDERA MEDICAL, INC.
6
7

ORIGINAL FILED
Northwest District

AUG 20 2009

LOS ANGELES
SUPERIOR COURT

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, NORTHWEST DISTRICT**
10

11 DEBRA BROUSSARD and ROBERT
BROUSSARD,

12 Plaintiffs,
13

14 v.

15 CALDERA MEDICAL, INC. a California
corporation; C.R. BARD, INC, a New Jersey
16 corporation; and DOES 1-15, inclusive,

17 Defendants.
18

Case No.: LC085621
Complaint Filed: May 21, 2009

Assigned to Hon. Michael Latin
Dept. NW-D

**NOTICE OF RULING UPON
DEFENDANT CALDERA MEDICAL,
INC.'S PEREMPTORY CHALLENGE OF
THE HONORABLE MICHAEL HARWIN
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE SECTION 170.6**

19 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**
20

21 **PLEASE TAKE NOTICE** that the Court found that Defendant CALDERA MEDICAL,
INC.'s peremptory challenge of the Honorable Michael Harwin pursuant to California *Code of Civil*
22 *Procedure* § 170.6 was timely and in proper format, and was therefore accepted.
23

24 **PLEASE TAKE FURTHER NOTICE** that the Supervising Judge ordered this case transferred
to Department NW "D," Honorable Michael Latin, presiding. Any previously scheduled or reserved
25 hearing dates were ordered vacated, and counsel must re-set them in the new department.
26


27 ///

28 ///

1 Defendant Caldera Medical, Inc. was ordered to give notice of the Court's ruling. Copy of the
2 Minute Order is attached hereto as Exhibit "A."

3
4
5 Dated: August 18, 2009

MORRIS POLICH & PURDY LLP

6
7 By: 
8 Anthony G. Brazil
Diana Kotler

9 Attorneys for Defendant,
10 CALDERA MEDICAL, INC.
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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/17/09

DEPT. NWM

HONORABLE MICHAEL HARWIN

JUDGE

K. TOBEY

DEPUTY CLERK

HONORABLE
13

JUDGE PRO TEM

ELECTRONIC RECORDING MONITORING

L. VINCE CRUZ C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

LC085621

Plaintiff

Counsel

DEBRA BROUSSARD, ET AL.

NO APPEARANCES

VS

Defendant

CALDERA MEDICAL, INC., ET AL.

Counsel

170.6 JUDGE MICHAEL HARWIN

NATURE OF PROCEEDINGS:

NON APPEARANCE - PEREMPTORY CHALLENGE PER CCP170.6

Counsel for defendant Calera Medical Inc. has filed a peremptory challenge pursuant to Code of Civil Procedure Section 170.6 against Judge Michael Harwin.

The Court finds that it was timely filed, in proper format, and is accepted.

By order of the Supervising Judge, Department NW"A", this case is ordered transferred to Department NW"D", Hon. Michael Latin, presiding. Any previously scheduled or reserved hearing dates are ordered vacated and counsel must re-set them in the new department.

Counsel will be notified of the next hearing date by the new department.

A true and correct copy of this minute order is sent via U.S. Mail to:
Anthony G. Brazil, Esq.
Morris Polich & Purdy
1055 West Seventh Street
24th Floor
Los Angeles, CA 90017

Counsel for the moving party is to give notice.

CLERK'S CERTIFICATE OF MAILING/

MINUTES ENTERED

08/17/09

COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/17/09

DEPT. NWM

HONORABLE MICHAEL HARWIN

JUDGE

K. TOBEY

DEPUTY CLERK

HONORABLE
13

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. VINCE CRUZ C.A.

Deputy Sheriff

NONE

Reporter

8:30 am LC085621

Plaintiff

Counsel

DEBRA BROUSSARD, ET AL.

NO APPEARANCES

VS

Defendant

CALDERA MEDICAL, INC., ET AL.

Counsel

170.6 JUDGE MICHAEL HARWIN

NATURE OF PROCEEDINGS:

NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 8/17/09 upon each party or counsel named above by depositing in the United States mail at the courthouse in Van Nuys, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown above with the postage thereon fully prepaid.

Date: August 17, 2009

John A. Clarke, Executive Officer/Clerk

By: 

Debra & Robert Broussard v. Caldera Medical, Inc., et al.
 Los Angeles County Superior Court, Northwest District
 Case No. LC 0875621

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 1055 West Seventh Street, 24th Floor, Los Angeles, California 90017.

On August 18, 2009, I served the foregoing document, described as "NOTICE OF RULING UPON DEFENDANT CALDERA MEDICAL, INC.'S PEREMPTORY CHALLENGE OF THE HONORABLE MICHAEL HARWIN PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 170.6" on the interested parties in this action by placing ☐ the original ☒ a true copy of enclosed in separate sealed envelopes to the following addresses:

Robert F. Arentz, Esq.

Lowell W. Finzon, Esq.

Lowell@phillipslaw.ws

PHILLIPS & ASSOCIATES

20 East Thomas Road, Suite 2600

Phoenix, AZ 85012

Tel: (602) 258-8900 / Fax: (602) 288-1671

*Attorneys for Plaintiffs DEBRA BROUSSARD and
 ROBERT BROUSSARD*

R. Scott LaSalle, Esq.

SHOOK, HARDY & BACON, L.L.P.

Jamboree Center

5 Park Plaza, Suite 1600

Irvine, CA 92614-8502

Tel: (949) 475-1500 / Fax: (949) 475-0016

Attorneys for Defendant C.R. BARD, INC.

☒ **BY U.S. MAIL** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.


I am "readily familiar" with Morris Polich & Purdy LLP's practice of collection and processing correspondence for mailing. Under that practice documents are deposited with the U.S. Postal Service on the same day which is stated in this Proof of Service, with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date stated in this Proof of Service.

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☐ **BY FACSIMILE** I caused the above-referenced document to be transmitted via facsimile from (213) 488-1178 to the parties as listed on this Proof of Service. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the state of California, that the above is true and correct.

Executed on August 18, 2009, at Los Angeles, California.


 Mineeh P. Lapid

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2 Diana Kotler, Esq. (SBN 217235)
3 MORRIS POLICH & PURDY LLP
4 1055 West Seventh Street, 24th Floor
Los Angeles, California 90017
Telephone: (213) 891-9100
Facsimile: (213) 488-1178

5 Attorneys for Defendant,
6 CALDERA MEDICAL, INC.

ORIGINAL FILED
Northwest District

LOS ANGELES
SUPERIOR COURT

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, NORTHWEST DISTRICT**

10
11 DEBRA BROUSSARD and ROBERT
12 BROUSSARD,

13 Plaintiffs,

14 v.

15 CALDERA MEDICAL, INC. a California
16 corporation; C.R. BARD, INC, a New Jersey
corporation; and DOES 1-15, inclusive,

17 Defendants.

Case No.: LC085621
Complaint Filed: May 21, 2009

Assigned to Hon. Michael A. Latin
Dept. NW-D

**CALDERA MEDICAL, INC.'S ANSWER
TO PLAINTIFFS' UNVERIFIED
COMPLAINT**

18
19 COMES NOW Defendant CALDERA MEDICAL, INC. (hereinafter referred to as "Caldera" or
20 "Defendant") and hereby answers Plaintiffs DEBRA BROUSSARD and ROBERT BROUSSARD's
21 (hereinafter referred to as "Plaintiffs") Unverified Complaint (hereinafter referred to as "Complaint") as
22 follows:

23 **GENERAL DENIAL**

24 Pursuant to California Code of Civil Procedure section 431.30, Caldera generally and
25 specifically denies each and every allegation, and each and every cause of action in the Complaint, and
26 further denies that Plaintiffs have been damaged in the manner or sums alleged, or any lesser sums, or
27 at all.
28

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. The Complaint and all causes of action asserted against Defendant therein fail to state facts sufficient to constitute a cause of action as to this Defendant.

SECOND AFFIRMATIVE DEFENSE

2. The Complaint fails to allege ultimate facts sufficient to state a cause of action predicated upon strict products liability (failure to warn, design defect and/or manufacturing defect) or negligence.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs failed to exercise ordinary care on his own behalf for their own safety. That negligence caused the injury and damage, if any, that they sustained. Consequently, Plaintiffs' recovery should be diminished by their proportional share of fault.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiffs failed to mitigate any damage that he may have sustained and to exercise reasonable care to avoid the consequences of harms, if any, in that, among other things, Plaintiffs have failed to use reasonable diligence in caring for any injury, failed to use reasonable means to prevent any aggravation of any injury, and failed to take reasonable precautions to reduce any injury and damage.

FIFTH AFFIRMATIVE DEFENSE

5. Defendant denies that Plaintiffs suffered injuries or incurred any damages, or that any defendant is liable. If Plaintiffs did suffer any injuries or incur any damages, any injuries or damages were caused, in whole or in part, by the acts or omissions of persons or entities other than Defendant or superseding or intervening causes over which Defendant had no control. If there is any negligence or liability by any defendant, it is the sole and exclusive negligence and liability of others and not this answering Defendant. If Defendant were to be held responsible, it should be indemnified.

SIXTH AFFIRMATIVE DEFENSE

6. The alleged damages, injuries or losses, if any, of Plaintiffs were not proximately caused by any alleged act, omission or breach of duty by Defendant but were caused in whole or in part by the

1 acts or omissions of Plaintiffs and/or others so that the principles of contributory negligence,
2 comparative fault and/or assumption of the risk apply.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 7. To the extent that Plaintiffs' claims are based on a theory providing for liability without
5 proof of causation, the claims violate Defendant's rights under the United States Constitution and
6 analogous provisions of the California Constitution.

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 8. If any of the other parties are negligent, legally responsible or otherwise at fault for the
9 damages alleged in the Complaints, and if there is a finding of any liability in favor of Plaintiffs or
10 settlement or judgment against Defendant, Defendant requests that the Court or Jury make an
11 apportionment of fault among all parties as permitted by *Li v. Yellow Cab Co.* and *American*
12 *Motorcycle Association v. Superior Court*, or any substantially equivalent law applicable in the
13 Plaintiffs' state or country of residence. Defendant further requests a judgment and declaration of
14 partial indemnification and contribution against all other parties or persons in accordance with the
15 apportionment of fault under all applicable laws.

16 **NINTH AFFIRMATIVE DEFENSE**

17 9. Defendant is entitled to set-off, should any damages be awarded against it, in the amount
18 of damages or settlement amounts recovered by Plaintiffs, or any state entity acting on behalf of
19 Plaintiffs, with respect to the same alleged injuries. Defendant is also entitled to have any damages that
20 may be awarded to Plaintiffs reduced by the value of any benefit or payment to Plaintiffs, or any state
21 entity acting on behalf of Plaintiffs, from any collateral source.

22 **TENTH AFFIRMATIVE DEFENSE**

23 10. Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs, or any state
24 entity acting on behalf of Plaintiffs, have released, settled, entered into an accord and satisfaction or
25 otherwise compromised Plaintiffs' claims and/or on the grounds that Defendant has discharged its
26 obligations to Plaintiffs.

27
28 ///

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs have brought an action(s) and has received a judgment(s) on parts of some or all of the claims asserted herein.

TWELFTH AFFIRMATIVE DEFENSE

12. At all times, Defendant's acts or omissions were privileged, justified, fair and undertaken in the good faith exercise of a valid business purpose.

THIRTEENTH AFFIRMATIVE DEFENSE

13. The claimed injuries and/or damages of Plaintiffs are so remote, speculative or contingent that Plaintiffs' claims must be barred on public policy grounds.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Plaintiffs' claims are barred in whole or in part because Plaintiffs lack capacity or standing to bring such claims.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Plaintiffs' claims are barred in whole or in part because the Complaint fails to join necessary and indispensable parties.

SIXTEENTH AFFIRMATIVE DEFENSE

16. Plaintiffs' claims for negligence and strict liability are barred by the economic loss doctrine to the extent that Plaintiffs seek only economic damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. Plaintiffs' claims of non-economic damages are subject to Civil Code section 1431.2, which is applicable to the Complaint and each cause of action therein.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. Plaintiffs did not justifiably rely, in any fashion whatsoever, on any statement, representation, advice or conduct of Defendant, and did not act based upon any statement, representation, advice or conduct to their detriment.

NINETEENTH AFFIRMATIVE DEFENSE

19. Defendant breached no alleged duty of care owed to Plaintiffs and Plaintiffs' alleged injuries were not proximately caused by acts or omissions of Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

20. Plaintiffs have failed to preserve evidence and as a result of such spoliation, Defendant has been prejudiced and Plaintiffs' claims should be barred.

TWENTY-FIRST AFFIRMATIVE DEFENSE

21. Plaintiffs' causes of action are time-barred pursuant to the applicable statute of limitations and/or statutes of repose, including but not limited to Code of Civil Procedure sections 335.1, 337, 338 and former 340(d), Business & Professions Code section 17208, Civil Code 1783 and Commercial Code section 2725, or any substantially equivalent laws or statutes applicable in the Plaintiffs' state or country of residence.

TWENTY-SECOND AFFIRMATIVE DEFENSE

22. Defendant alleges that Plaintiffs are barred from alleging the matters set forth in the Complaint because Plaintiffs have inexcusably and unreasonably delayed the commencement of the action, to the prejudice of Defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

23. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have not suffered any cognizable or compensable injuries or damages.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

24. Plaintiffs' claims are or may be barred, in whole or in part, based on principles of equity.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

25. Plaintiffs' claims are barred in whole or in part by the doctrines of accord and satisfaction, good faith, consent, res judicata, payment and release, waiver, collateral estoppel, judicial estoppel, equitable estoppel, unclean hands, laches and/or statutory and regulatory compliance.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

26. Federal law preempts Plaintiffs' claims. As such, Plaintiffs' claims are barred in whole or in part by the deference given to the primary jurisdiction of the Food and Drug Administration over the subject medical device under applicable federal laws, regulations and rules. Plaintiffs have asserted claims for relief which, if granted, would constitute an impermissible burden by this Court on Federal

1 laws, regulations and policies relating to the development and marketing of products, in violation of the
2 Supremacy Clause, Article VI of the Constitution of the United States.

3 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

4 27. Plaintiffs' claims are barred in whole or in part because there is no private right of
5 action concerning matters regulated by the Food and Drug Administration under applicable federal
6 laws, regulations and rules.

7 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

8 28. At all times, any product designed, manufactured and/or distributed by Defendant was
9 designed, manufactured and/or distributed in compliance with all applicable federal, state and local
10 laws and regulations, and rules promulgated and enforced by the Food and Drug Administration. The
11 product was subject to and received clearance from the Food and Drug Administration. Compliance
12 with such laws, regulations and rules demonstrates that due care and reasonable prudence were
13 exercised in the design, manufacture and distribution of the subject medical device and that said
14 product was not defective in any way.

15 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

16 29. The alleged injuries of Plaintiffs were the direct and proximate result of an idiosyncratic
17 reaction which was not reasonably foreseeable; and/or was not the result of any conduct or negligence
18 on the part of Defendant; and/or was not the result of any defect in any product sold by Defendant;
19 therefore, this Defendant cannot be held liable to Plaintiffs as a matter of law.

20 **THIRTIETH AFFIRMATIVE DEFENSE**

21 30. Defendant alleges that at all relevant times during which the alleged product was
22 designed, manufactured, inspected, packaged, labeled and sold, it was in full compliance and
23 conformity with applicable industry and governmental standards and was reasonably safe and
24 reasonably fit for its intended use, and was accompanied by proper warnings, information and
25 instructions, all pursuant to generally recognized prevailing industry standards and the "state of the art"
26 in existence at the time of such design, manufacture, inspection, packaging, labeling and sale, and
27 therefore, the product was not defective or unreasonably dangerous.

28 ///

THIRTY-FIRST AFFIRMATIVE DEFENSE

31. Defendant asserts that it has complied with all applicable state and federal laws relating to the sale and/or distribution of medical devices.

THIRTY-SECOND AFFIRMATIVE DEFENSE

32. The Complaint and all causes of action therein are barred due to the lack of privity, or a "transaction," between Plaintiff and Defendant.

THIRTY-THIRD AFFIRMATIVE DEFENSE

33. To the extent that Plaintiffs allege a failure to warn by Defendant, Plaintiffs' claims are barred because there is no evidence that he would have heeded a different warning.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

34. The learned intermediary doctrine bars Plaintiffs' recovery of any damages. Any duty to warn Plaintiffs of the risks and hazards associated with the product was discharged by providing adequate warning to physicians.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

35. The product was not used in the manner in which it was intended to be used. The product was used in a manner that was abnormal and not reasonably foreseeable by Defendant. Such misuse of the product proximately caused or contributed to the alleged damages, injuries and losses, if any, of Plaintiffs.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

36. The alleged injuries or illnesses of Plaintiffs preexisted or were suffered after the alleged use of the product, and such alleged injuries or illnesses were neither caused nor exacerbated by said alleged use.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

37. Plaintiffs' injuries, if any, were caused or contributed to by a failure to follow the directions and precautions provided for the product.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

38. Plaintiffs' claims are barred under Section 4, et seq., of the Restatement (Third) of Torts: Products Liability.

THIRTY-NINTH AFFIRMATIVE DEFENSE

39. Defendant denies that any product manufactured by it caused or contributed to the alleged injuries of Plaintiffs, and Defendant further denies that it is liable to Plaintiffs for the claims alleged or for any other claims whatsoever.

FORTIETH AFFIRMATIVE DEFENSE

40. Plaintiffs' claims are barred because the utility of the subject product outweighed its risk.

FORTY-FIRST AFFIRMATIVE DEFENSE

41. Defendant asserts that as of the relevant times alleged in the Complaint, it did not know and, in light of the then existing reasonable available scientific and technological knowledge, could not have known of: (1) the design characteristics, if any, that allegedly caused the injuries and damages complained of in the Complaint; (2) the alleged danger of any such design characteristics.

FORTY-SECOND AFFIRMATIVE DEFENSE

42. At the times and places set forth in the Complaint, Plaintiffs had full knowledge of the risks and possible adverse effects pertaining to use of the product, as well as the risks relative to the subject product, and part or all of the injuries, damages and/or losses, if any, sustained by Plaintiffs arose from and were caused by such risks, of which Plaintiffs were aware and that were voluntarily accepted and assumed by Plaintiffs, and for that reason Plaintiffs' recovery, if any, should be diminished, reduced, offset or barred by Plaintiffs' assumption of the risks and/or informed consent.

FORTY-THIRD AFFIRMATIVE DEFENSE

43. After the product left the possession and control of Defendant, if in fact any product was ever in the possession or control of Defendant, the product was redesigned, modified, altered or subjected to treatment that substantially changed its character without Defendant's knowledge. Any alleged defect resulted, if at all, from the redesign, modification, alteration, treatment or other change of the product after Defendant relinquished possession of and control over any such product and not from any act or omission of Defendant.

///

FORTY-FOURTH AFFIRMATIVE DEFENSE

44. The product at issue in this litigation is not defective or unreasonably dangerous because it is a medical device bearing adequate warnings, and is subject to the comment j exception to strict liability as set forth in § 402A of the Restatement (Second) of Torts (1965).

FORTY-FIFTH AFFIRMATIVE DEFENSE

45. Plaintiffs' claims are barred, in whole or in part, by the First Amendment of the United States Constitution and similar provisions in the Constitution of the State of California which protect, among other things, Defendant's right to promote and advertise its products.

FORTY-SIXTH AFFIRMATIVE DEFENSE

46. Plaintiffs' counsel is not entitled to recover its fees and/or costs by contract or for any cause of action alleged in the Complaint.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

47. The damages sustained by Plaintiffs, if any, were the result of an unavoidable accident insofar as Defendant is concerned and occurred without any negligence, want of care, default, or other breach of duty to Plaintiffs by this Defendant.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

48. Plaintiffs' Complaint is barred because of lack of privity between Plaintiffs and Defendant.

FORTY-NINTH AFFIRMATIVE DEFENSE

49. Defendant had no duty of care toward Plaintiffs and therefore, Defendants are not liable for any alleged injuries by Plaintiffs.

FIFTIETH AFFIRMATIVE DEFENSE

50. Defendant met its duty, if any, to disclose the facts which plaintiffs allege form the basis of his misrepresentation claims. Further, there was no reliance by any plaintiff upon any information that plaintiffs claims was misrepresented.

///

///

FIFTY-FIRST AFFIRMATIVE DEFENSE

51. To the extent that Plaintiffs are alleging misrepresentation or similar conduct, Plaintiffs have failed to state a valid claim and has failed to comply with the requirements set forth under Civil Code § 1710. Further, Plaintiffs did not rely on any material information which Plaintiffs allege was misrepresented by Defendant.

FIFTY-SECOND AFFIRMATIVE DEFENSE

52. Defendant had no duty to disclose the facts which Plaintiffs allege were misrepresented, and which form the basis of his misrepresentation and/or failure to warn claims; moreover, Plaintiffs did not rely on any information which Plaintiffs claim Defendant misrepresented.

FIFTY-THIRD AFFIRMATIVE DEFENSE

53. Defendant expressly disclaimed any alleged implied warranty by using language that in common understanding called to Plaintiffs' attention the exclusion of warranties and made plain that there was no implied warranty.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

54. Plaintiffs did not give Defendant notice of a breach of warranty within a reasonable time after they knew or should have known that the product was not fit for its intended purpose.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

55. Defendant alleges that plaintiffS have improperly joined parties to this action; therefore, defendant objects to the misjoinder of parties in the Complaint pursuant to Code of Civil Procedure §430.10(d).

FIFTY-SIXTH AFFIRMATIVE DEFENSE

56. Defendant adopts and incorporates by reference any affirmative defenses asserted by any other defendant to this action to the extent such affirmative defenses apply to Defendant. Defendant reserves the right to assert, and hereby gives notice that it intends to rely upon any other defenses that may become legally available hereafter or become apparent during discovery; accordingly, Defendant reserves the right to amend this Answer by adding defenses to conform to such information.

///

1 WHEREFORE, Defendant prays for relief as follows:

- 2 1. That Plaintiffs take nothing by this action;
- 3 2. That judgment be entered in favor of Defendant and against Plaintiffs;
- 4 3. That Defendant be awarded costs of suit herein; and
- 5 4. For such other and further relief as the Court may deem just and proper.

6

7 Dated: September 28, 2009

Respectfully submitted,

8 MORRIS POLICH & PURDY LLP

9

10 By: 

11 Anthony G. Brazil
12 Diana Kotler

13 Attorneys for Defendant
14 CALDERA MEDICAL, INC.

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25

26

27

28


DEMAND FOR JURY TRIAL

Defendant CALDERA MEDICAL, INC. hereby demands trial of this matter by jury.

Dated: September 28, 2009

Respectfully submitted,

MORRIS POLICH & PURDY LLP

By: 

Anthony G. Brazil

Diana Kotler

Attorneys for Defendant
CALDERA MEDICAL, INC.

Debra & Robert Broussard v. Caldera Medical, Inc., et al.
 Los Angeles County Superior Court, Northwest District
 Case No. LC 0875621

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 1055 West Seventh Street, 24th Floor, Los Angeles, California 90017.

On September 29, 2009, I served the foregoing document, described as "**CALDERA MEDICAL, INC.'S ANSWER TO PLAINTIFFS' UNVERIFIED COMPLAINT**" on the interested parties in this action by placing ☐ the original ☒ a true copy of enclosed in separate sealed envelopes to the following addresses:

Robert F. Arentz, Esq.
 Lowell W. Finzon, Esq.
Lowell@phillipslaw.ws
 PHILLIPS & ASSOCIATES
 20 East Thomas Road, Suite 2600
 Phoenix, AZ 85012
 Tel: (602) 258-8900 / Fax: (602) 288-1671
Attorneys for Plaintiffs DEBRA BROUSSARD and ROBERT BROUSSARD

R. Scott LaSalle, Esq.
 SHOOK, HARDY & BACON, L.L.P.
 Jamboree Center
 5 Park Plaza, Suite 1600
 Irvine, CA 92614-8502
 Tel: (949) 475-1500 / Fax: (949) 475-0016
Attorneys for Defendant C.R. BARD, INC.

☒ **BY U.S. MAIL** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.

I am "readily familiar" with Morris Polich & Purdy LLP's practice of collection and processing correspondence for mailing. Under that practice documents are deposited with the U.S. Postal Service on the same day which is stated in this Proof of Service, with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date stated in this Proof of Service.

☐ **BY OVERNIGHT MAIL** I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE** I caused the above-referenced document to be transmitted via facsimile from (213) 488-1178 to the parties as listed on this Proof of Service. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the state of California, that the above is true and correct.

Executed on September 29, 2009, at Los Angeles, California.


 Mineeh P. Lapid

1 Anthony G. Brazil, Esq. (SBN 84297)
2 Diana Kotler, Esq. (SBN 217235)
3 MORRIS POLICH & PURDY LLP
4 1055 West Seventh Street, 24th Floor
5 Los Angeles, California 90017
6 Telephone: (213) 891-9100
7 Facsimile: (213) 488-1178

8 Attorneys for Defendant,
9 CALDERA MEDICAL, INC.

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles County Superior Court

SEP 23 2009

John A. Clarke, Executive Officer/Clerk
By _____ Deputy

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, NORTHWEST DISTRICT**

13 DEBRA BROUSSARD and ROBERT
14 BROUSSARD,

15 Plaintiffs,

16 v.

17 CALDERA MEDICAL, INC. a California
18 corporation; C.R. BARD, INC, a New Jersey
19 corporation; and DOES 1-15, inclusive,

20 Defendants.

Case No.: LC085621
Complaint Filed: May 21, 2009

Assigned to Hon. Michael Harwin
Dept. NW-M

**STIPULATION BETWEEN PLAINTIFFS
AND DEFENDANT CALDERA
MEDICAL, INC REGARDING
DISMISSAL OF CERTAIN CAUSES OF
ACTION AND PUNITIVE DAMAGES
CLAIMS AS AGAINST CALDERA
MEDICAL, INC.; [PROPOSED] ORDER**

21 **TO THIS HONORABLE COURT:**

22 Plaintiffs DEBRA BROUSSARD and ROBERT BROUSSARD ("Plaintiffs") filed their
23 Complaint on May 21, 2009. The Complaint contained ten causes of action, including (1) strict
24 products liability – failure to warn; (2) strict liability; (3) negligence; (4) breach of implied warranty;
25 (5) breach of express warranty; (6) fraud; (7) fraud by concealment; (8) negligence concealment; (8)
26 negligent misrepresentation; (9) violation of State Consumer Fraud and Deceptive Practices Act; and
27 (10) loss of consortium. Additionally, the Complaint contained a demand for punitive and exemplary
28

1 damages in the prayer for relief. With respect to claims against Caldera Medical, Inc. Plaintiffs have
2 now agreed to dismiss without prejudice and deem stricken the sixth, seventh and ninth causes of
3 action and the demand for punitive and exemplary damages contained in the Complaint, as to Caldera
4 Medical, Inc.

5
6 **THEREFORE, IT IS HEREBY STIPULATED** and agreed by and between plaintiffs
7 DEBRA BROUSSARD and ROBERT BROUSSARD, on the one hand and defendant CALDERA
8 MEDICAL, INC., on the other hand, by and through their respective attorneys of record, as follows:

- 9 1. The sixth cause of action for Fraud (Complaint at 12:18-13:25) as to Caldera Medical,
10 Inc. shall be dismissed without prejudice and deemed stricken from the Complaint as to
11 Caldera Medical, Inc.
- 12 2. The seventh cause of action for Fraud by Concealment (Complaint at 14:1-15:5) as to
13 Caldera Medical, Inc. shall be dismissed without prejudice and deemed stricken from
14 the Complaint as to Caldera Medical, Inc.;
- 15 3. The ninth cause action for Violation of State Consumer Fraud & Deceptive Practices
16 Act (Complaint at 16:4-18:12) as to Caldera Medical, Inc. shall be dismissed without
17 prejudice and deemed stricken from the Complaint as to Caldera Medical, Inc.;
- 18 4. The demand for punitive and exemplary damages as to Caldera Medical, Inc. contained
19 in the prayer for relief (Complaint at 19:17-21) shall be dismissed without prejudice
20 and deemed stricken from the Complaint as to Caldera Medical, Inc.; and
- 21 5. Caldera Medical, Inc. shall have ten (10) days after the entry of the Court's Order to
22 file its responsive pleading.

23 Dated: August 12, 2009

Respectfully submitted,

24 MORRIS POLICH & PURDY LLP

25
26 By: 


Anthony G. Brazil
Diana Kotler

27 Attorneys for Defendant
28 CALDERA MEDICAL, INC.

1 Dated: August 12, 2009

Respectfully submitted,

2 PHILLIPS & ASSOCIATES

3 

4 By: _____

Lowell W. Finson For Robert Arentz

Attorneys for Plaintiffs

DEBRA BROUSSARD and ROBERT BROUSSARD

7 **IT IS ORDERED THAT:**

8 The Court, having read and considered the above stipulation and agreement between plaintiffs
9 DEBRA BROUSSARD and ROBERT BROUSSARD and defendant CALDERA MEDICAL, INC.
10 makes the following order:

- 11 1. The sixth cause of action for Fraud (Complaint at 12:18-13:25) as to Caldera Medical,
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25
26
27 Dated: SEP 23 2009

MICHAEL A. LATIN

Judge of the Superior Court

Debra & Robert Broussard v. Caldera Medical, Inc., et al.
Los Angeles County Superior Court, Northwest District
Case No. LC 0875621

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 1055 West Seventh Street, 24th Floor, Los Angeles, California 90017.

On August 14, 2009, I served the foregoing document, described as "STIPULATION BETWEEN PLAINTIFFS AND DEFENDANT CALDERA MEDICAL, INC REGARDING DISMISSAL OF CERTAIN CAUSES OF ACTION AND PUNITIVE DAMAGES CLAIMS AS AGAINST CALDERA MEDICAL, INC.; [PROPOSED] ORDER" on the interested parties in this action by placing ☐ the original ☒ a true copy of enclosed in separate sealed envelopes to the following addresses:

Robert F. Arentz, Esq.
Lowell W. Finzon, Esq.
Lowell@phillipslaw.ws
PHILLIPS & ASSOCIATES
20 East Thomas Road, Suite 2600
Phoenix, AZ 85012
Tel: (602) 258-8900 / Fax: (602) 288-1671
Attorneys for Plaintiffs DEBRA BROUSSARD and ROBERT BROUSSARD

R. Scott LaSalle, Esq.
SHOOK, HARDY & BACON, L.L.P.
Jamboree Center
5 Park Plaza, Suite 1600
Irvine, CA 92614-8502
Tel: (949) 475-1500 / Fax: (949) 475-0016
Attorneys for Defendant C.R. BARD, INC.

☒ **BY U.S. MAIL** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.

I am "readily familiar" with Morris Polich & Purdy LLP's practice of collection and processing correspondence for mailing. Under that practice documents are deposited with the U.S. Postal Service on the same day which is stated in this Proof of Service, with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date stated in this Proof of Service.

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☐ **BY FACSIMILE** I caused the above-referenced document to be transmitted via facsimile from (213) 488-1178 to the parties as listed on this Proof of Service. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the state of California, that the above is true and correct.

Executed on August 14, 2009, at Los Angeles, California.



Mineeh P. Lapid

1 Anthony G. Brazil, Esq. (SBN 84297)
2 Diana Kotler, Esq. (SBN 217235)
3 MORRIS POLICH & PURDY LLP
4 1055 West Seventh Street, 24th Floor
Los Angeles, California 90017
Telephone: (213) 891-9100
Facsimile: (213) 488-1178

5 Attorneys for Defendant,
6 CALDERA MEDICAL, INC.

ORIGINAL FILED
Northwest District

OCT 08 2009

LOS ANGELES
SUPERIOR COURT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES, NORTHWEST DISTRICT

10
11 DEBRA BROUSSARD and ROBERT
12 BROUSSARD,

13 Plaintiffs,

14 v.

15 CALDERA MEDICAL, INC. a California
16 corporation; C.R. BARD, INC, a New Jersey
17 corporation; and DOES 1-15, inclusive,

18 Defendants.

Case No.: LC085621
Complaint Filed: May 21, 2009

Assigned to Hon. Michael Latin
Dept. NW-D

**NOTICE OF EXECUTION OF
STIPULATION BETWEEN PLAINTIFFS
AND DEFENDANT CALDERA
MEDICAL, INC. REGARDING
DISMISSAL OF CERTAIN CAUSES OF
ACTION AND PUNITIVE DAMAGES
CLAIMS AS AGAINST CALDERA
MEDICAL, INC.**

20
21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 **PLEASE TAKE NOTICE** that the Court has executed the Order upon the Stipulation
23 Between Plaintiffs and Defendant Caldera Medical, Inc. Regarding Dismissal of Certain Causes of
24 Action and Punitive Damages Claims as Against Caldera Medical, Inc..

25 **PLEASE TAKE FURTHER NOTICE** that the Court would like plaintiffs to file an amended
26 complaint pursuant to Court's note on the face sheet of the Stipulation.

27 ///

28 ///

L0185726

-1-

NOTICE OF EXECUTION OF STIPULATION BETWEEN PLAINTIFFS AND DEFENDANT CALDERA MEDICAL, INC.
REGARDING DISMISSAL OF CERTAIN CAUSES OF ACTION AND PUNITIVE DMAGES CLAIMS AS AGAINST
CALDERA MEDICAL, INC.

1 A true and correct copy of the Order is attached hereto as Exhibit A.

2
3 Dated: October 5, 2009

MORRIS POLICH & PURDY LLP

4
5 By: 

6 Anthony G. Brazil
Diana Kotler

7 Attorneys for Defendant,
8 CALDERA MEDICAL, INC.

Exhibit “A”

1 Anthony G. Brazil, Esq. (SBN 84297)
2 Diana Kotler, Esq. (SBN 217235)
3 MORRIS POLICH & PURDY LLP
4 1055 West Seventh Street, 24th Floor
5 Los Angeles, California 90017
6 Telephone: (213) 891-9100
7 Facsimile: (213) 488-1178

8 Attorneys for Defendant,
9 CALDERA MEDICAL, INC.

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles County Superior Court

SEP 23 2009

John A. Clarke, Executive Officer/Clerk
By _____, Deputy

*For signed
stipulation
CT would like
to file AMENDED*

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, NORTHWEST DISTRICT**

13 DEBRA BROUSSARD and ROBERT
14 BROUSSARD,

15 Plaintiffs,

16 v.

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20 Defendants.

Case No.: LC085621
Complaint Filed: May 21, 2009

Assigned to Hon. Michael Harwin
Dept. NW-M

**STIPULATION BETWEEN PLAINTIFFS
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MEDICAL, INC REGARDING
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CLAIMS AS AGAINST CALDERA
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26 negligent misrepresentation; (9) violation of State Consumer Fraud and Deceptive Practices Act; and
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28

1 damages in the prayer for relief. With respect to claims against Caldera Medical, Inc. Plaintiffs have
 2 now agreed to dismiss without prejudice and deem stricken the sixth, seventh and ninth causes of
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 22 file its responsive pleading.

23 Dated: August 12, 2009

Respectfully submitted,

MORRIS POLICH & PURDY LLP

25
 26 By: 

Anthony G. Brazil
 Diana Kotler

Attorneys for Defendant
 CALDERA MEDICAL, INC.

1 Dated: August 12, 2009

Respectfully submitted,

2 PHILLIPS & ASSOCIATES

3
4 By: 

Lowell W. Finson For Robert Arentz

Attorneys for Plaintiffs

DEBRA BROUSSARD and ROBERT BROUSSARD

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24 file its responsive pleading;

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26
27 Dated: SEP 23 2009

MICHAEL A. LATIN

Judge of the Superior Court

Debra & Robert Broussard v. Caldera Medical, Inc., et al.
 Los Angeles County Superior Court, Northwest District
 Case No. LC 0875621

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 1055 West Seventh Street, 24th Floor, Los Angeles, California 90017.

On August 14, 2009, I served the foregoing document, described as "STIPULATION BETWEEN PLAINTIFFS AND DEFENDANT CALDERA MEDICAL, INC REGARDING DISMISSAL OF CERTAIN CAUSES OF ACTION AND PUNITIVE DAMAGES CLAIMS AS AGAINST CALDERA MEDICAL, INC.; [PROPOSED] ORDER" on the interested parties in this action by placing ☐ the original ☒ a true copy of enclosed in separate sealed envelopes to the following addresses:

Robert F. Arentz, Esq.
 Lowell W. Finzon, Esq.
Lowell@phillipslaw.ws
 PHILLIPS & ASSOCIATES
 20 East Thomas Road, Suite 2600
 Phoenix, AZ 85012
 Tel: (602) 258-8900 / Fax: (602) 288-1671
Attorneys for Plaintiffs DEBRA BROUSSARD and ROBERT BROUSSARD

R. Scott LaSalle, Esq.
 SHOOK, HARDY & BACON, L.L.P.
 Jamboree Center
 5 Park Plaza, Suite 1600
 Irvine, CA 92614-8502
 Tel: (949) 475-1500 / Fax: (949) 475-0016
Attorneys for Defendant C.R. BARD, INC.

☒ **BY U.S. MAIL** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.

I am "readily familiar" with Morris Polich & Purdy LLP's practice of collection and processing correspondence for mailing. Under that practice documents are deposited with the U.S. Postal Service on the same day which is stated in this Proof of Service, with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date stated in this Proof of Service.

☐ **BY OVERNIGHT MAIL** I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE** I caused the above-referenced document to be transmitted via facsimile from (213) 488-1178 to the parties as listed on this Proof of Service. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the state of California, that the above is true and correct.

Executed on August 14, 2009, at Los Angeles, California.


 Mineeh P. Lapid

Debra & Robert Broussard v. Caldera Medical, Inc., et al.
 Los Angeles County Superior Court, Northwest District
 Case No. LC 0875621

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 1055 West Seventh Street, 24th Floor, Los Angeles, California 90017.

On October 5, 2009, I served the foregoing document, described as "NOTICE OF EXECUTION OF STIPULATION BETWEEN PLAINTIFFS AND DEFENDANT CALDERA MEDICAL, INC. REGARDING DISMISSAL OF CERTAIN CAUSES OF ACTION AND PUNITIVE DAMAGES CLAIMS AS AGAINST CALDERA MEDICAL, INC." on the interested parties in this action by placing ☐ the original ☒ a true copy of enclosed in separate sealed envelopes to the following addresses:

Robert F. Arentz, Esq.
 Lowell W. Finzon, Esq.

Lowell@phillipslaw.ws
 PHILLIPS & ASSOCIATES

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 Phoenix, AZ 85012

Tel: (602) 258-8900 / Fax: (602) 288-1671

*Attorneys for Plaintiffs DEBRA BROUSSARD and
 ROBERT BROUSSARD*

R. Scott LaSalle, Esq.

SHOOK, HARDY & BACON, L.L.P.

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5 Park Plaza, Suite 1600

Irvine, CA 92614-8502

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Attorneys for Defendant C.R. BARD, INC.

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I declare under penalty of perjury under the laws of the state of California, that the above is true and correct.

Executed on October 5, 2009, at Los Angeles, California.



Mineeh P. Lapid

CIV-120

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Diana Kotler, Esq. (SBN 217235) MORRIS POLICH & PURDY LLP 1055 W. Seventh Street, 24th Floor Los Angeles, CA 90017		TELEPHONE NO.: (213) 891-9100	FOR COURT USE ONLY DEC 04 2009
ATTORNEY FOR (Name): Defendant CALDERA MEDICAL, INC. Insert name of court and name of judicial district and branch court, if any: SUPERIOR COURT OF CALIFORNIA NORTHWEST DISTRICT			
PLAINTIFF/PETITIONER: DEBRA BROUSSARD and ROBERT BROUSSARD DEFENDANT/RESPONDENT: CALDERA MEDICAL, INC., et al.			
NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE <input checked="" type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Product Liability		CASE NUMBER: LC085621	

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. (Attach a copy completed by the clerk.)

Date: December 3, 2009

Diana Kotler

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)



(SIGNATURE)

PROOF OF SERVICE

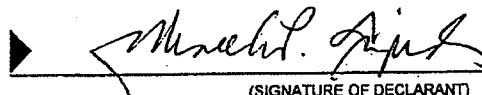
- I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is:
 Morris Polich & Purdy LLP
 1055 W. Seventh Street, 24th Floor, Los Angeles, CA 90017
- ☒ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by mailing them, in a sealed envelope with postage fully prepaid, as follows:
 - ☐ I deposited the envelope with the United States Postal Service.
 - ☒ I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
 - Date of deposit: December 3, 2009
 - Place of deposit (city and state): Los Angeles, California
 - Addressed as follows (name and address):
 Robert F. Arentz / Lowell W. Finzon, Phillips & Associates, 20 East Thomas Road,
 Suite 2600, Phoenix, AZ 85012
 R. Scott LaSalle, Shook Hardy & Bacon, LLP, 5 Park Plaza, Suite 1600, Irvine, CA 92614
- ☐ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by personally delivering copies to the person served as shown below:
 Name: _____ Date: _____ Time: _____ Address: _____

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 3, 2009

Mineeh P. Lapid

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

Page 1 of 1

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert F. Arentz Robert F. Arentz, SBN 114159 PHILLIPS & ASSOCIATES 3030 North Third Street, Suite 1100 Phoenix, Arizona 85012 TELEPHONE NO.: (602) 258-8900 FAX NO. (Optional): (602) 288-1671 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Attorneys for Plaintiffs DEBRA BROUSSARD and ROBERT BROUSSARD		FOR COURT USE ONLY ORIGINAL FILED LOS ANGELES SUPERIOR COURT NOV 23 2009 John A. Clarke, Clerk By R. Villagomez, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 6230 Sylmar Avenue MAILING ADDRESS: CITY AND ZIP CODE: Van Nuys, CA 91401 BRANCH NAME: NORTHWEST DISTRICT		
PLAINTIFF/PETITIONER: DEBRA BROUSSARD and ROBERT BROUSSARD DEFENDANT/RESPONDENT: CALDERA MEDICAL, INC., et al.		
REQUEST FOR DISMISSAL <input checked="" type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Product liability CASE NUMBER: LC085621		

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☐ With prejudice (2) ☒ Without prejudice
 b. (1) ☐ Complaint (2) ☐ Petition
 (3) ☐ Cross-complaint filed by (name):
 (4) ☐ Cross-complaint filed by (name):
 (5) ☐ Entire action of all parties and all causes of action
 (6) ☒ Other (specify):* Complaint against defendant Caldera Medical, Inc. only.

on (date):

on (date):

2. (Complete in all cases except family law cases.)

- ☐ Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date: November 23rd 2009

Robert F. Arentz

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

(SIGNATURE)
 Attorney or party without attorney for DEBRA BROUSSARD and ROBERT BROUSSARD
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint -- or Response (Family Law) seeking affirmative relief -- is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (1) or (2).

(SIGNATURE)
 Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

(To be completed by clerk)

4. ☐ Dismissal entered as requested on (date):
 5. ☒ Dismissal entered on (date): NOV 23 2009 as to only (name): AS ABOVE
 6. ☐ Dismissal not entered as requested for the following reasons (specify):

7. a. ☒ Attorney or party without attorney notified on (date): NOV 23 2009
 b. ☐ Attorney or party without attorney not notified. Filing party failed to provide,
☐ a copy to be conformed ☐ means to return conformed copy

Date NOV 23 2009

Clerk, by

JOHNA CLARKE

R. Villagomez, Deputy
 Page 1 of 2

CIV-110

PLAINTIFF/PETITIONER: DEBRA BROUSSARD and ROBERT BROUSSARD DEFENDANT/RESPONDENT: CALDERA MEDICAL, INC., et al.	CASE NUMBER: LC085621
---	--------------------------

Declaration Concerning Waived Court Fees

The court has a statutory lien for waived fees and costs on any recovery of \$10,000 or more in value by settlement, compromise, arbitration award, mediation settlement, or other recovery. The court's lien must be paid before the court will dismiss the case.

1. The court waived fees and costs in this action for (name): Not applicable
2. The person in item 1 (check one):
 - a. ☐ is not recovering anything of value by this action.
 - b. ☐ is recovering less than \$10,000 in value by this action.
 - c. ☐ is recovering \$10,000 or more in value by this action. (If item 2c is checked, item 3 must be completed.)
3. ☐ All court fees and costs that were waived in this action have been paid to the court (check one): ☐ Yes ☐ No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: November 23rd, 2009

Robert F. Arentz, Esq.

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY MAKING DECLARATION)

(SIGNATURE)

Debra & Robert Broussard v. Caldera Medical, Inc., et al.
 Los Angeles County Superior Court, Northwest District
 Case No. LC 0875621

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 1055 West Seventh Street, 24th Floor, Los Angeles, California 90017.

On November 23, 2009, I served the foregoing document, described as "REQUEST FOR DISMISSAL (COMPLAINT AGAINST DEFENDANT CALDERA MEDICAL, INC.)" on the interested parties in this action by placing ☐ the original ☒ a true copy of enclosed in separate sealed envelopes to the following addresses:

Robert F. Arentz, Esq.
 Lowell W. Finzon, Esq.
lowellf@phillipslaw.ws
 PHILLIPS & ASSOCIATES
 20 East Thomas Road, Suite 2600
 Phoenix, AZ 85012
 Tel: (602) 258-8900 / Fax: (602) 288-1671

*Attorneys for Plaintiffs DEBRA BROUSSARD and
 ROBERT BROUSSARD*

R. Scott LaSalle, Esq.
 SHOOK, HARDY & BACON, L.L.P.
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 5 Park Plaza, Suite 1600
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I declare under penalty of perjury under the laws of the state of California, that the above is true and correct.

Executed on November 23, 2009, at Los Angeles, California.


 Mineeh P. Lapid

RS✓

1 SHOOK, HARDY & BACON L.L.P.
2 R. Scott LaSalle (SBN: 188287)
3 Jamboree Center
4 5 Park Plaza, Suite 1600
5 Irvine, California 92614-2546
6 Telephone: 949.475.1500
7 Facsimile: 949.475.0016

ORIGINAL FILED
Northwest District
JUN 19 2009
LOS ANGELES
SUPERIOR COURT

8 Attorneys for Defendant C. R. Bard, Inc.

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES, NORTHWEST DISTRICT
12

13 DEBRA BROUSSARD and ROBERT
14 BROUSSARD, wife and husband,

15 Plaintiffs,

16 vs.

17 CALDERA MEDICAL, INC., a California
18 corporation; C.R. BARD, INC. a New
19 Jersey corporation; DOES ONE through
20 FIFTEEN,

21 Defendants.

Case No. LC085621

Judge: Hon.
Dept:

DEFENDANT C.R. BARD, INC.'S
ANSWER AND DEFENSES TO
PLAINTIFFS' COMPLAINT

Complaint filed: May 21, 2009.

22 Defendant C. R. BARD, INC. ("Bard") answers Plaintiff's Complaint for Damages as
23 follows:

24 **GENERAL DENIAL**

25 Under section 431.30 of the Code of Civil Procedure, Bard denies all of the
26 allegations in Plaintiffs' Complaint, and each cause of action. Bard further denies that
27 Plaintiffs sustained any damages.
28

AFFIRMATIVE DEFENSES

Bard sets forth below its affirmative defenses to Plaintiffs' Complaint.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. The plaintiffs' Complaint filed herein fails to state a claim or claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Third Party Proximate Cause)

2. The sole proximate cause of the plaintiffs' damages, if any were sustained, was the negligence of a person or persons or entity for whose acts or omissions Bard was and is in no way liable.

THIRD AFFIRMATIVE DEFENSE

(Assumption of Risk/Failure to Mitigate)

3. If the plaintiffs have been damaged, which Bard denies, any recovery by the plaintiffs is barred to the extent Plaintiff Debra Broussard voluntarily exposed herself to a known risk and/or failed to mitigate her alleged damages. To the extent the plaintiffs have failed to mitigate their alleged damages, any recovery shall not include alleged damages that could have been avoided by reasonable care and diligence.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Exercise Ordinary Care)

4. Plaintiff Debra Broussard failed to exercise ordinary care for her own safety such that the plaintiffs are not entitled to recover.

FIFTH AFFIRMATIVE DEFENSE

(Pre-existing Condition)

5. The injuries and damages allegedly sustained by the plaintiffs may be due to the operation of nature or idiosyncratic reaction(s) and/or pre-existing condition(s) in the plaintiffs over which Bard had no control.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 (Statute of Limitations/Repose)

3 6. The plaintiffs' causes of action may be barred by the applicable statute of
4 limitations and/or statute of repose.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 (Laches/Waiver/Estoppel)

7 7. The plaintiffs' claims are barred, in whole or in part, by the doctrines of laches,
8 waiver, and/or estoppel.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 (Lack of Defect)

11 8. There was no defect in the product at issue with the result that the plaintiffs are
12 not entitled to recover against Bard in this cause.

13 **NINTH AFFIRMATIVE DEFENSE**

14 (Lack of Causation)

15 9. There was no causal connection between any alleged defect in the product at
16 issue and plaintiffs' alleged damages with the result that plaintiffs are not entitled to recover
17 against Bard in this cause.

18 **TENTH AFFIRMATIVE DEFENSE**

19 (Comparative Fault)

20 10. If the plaintiffs have been damaged, which Bard denies, such damages were
21 caused by the negligence or fault of the plaintiffs.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 (Third Party Negligence)

24 11. If the plaintiffs have been damaged, which Bard denies, such damages were
25 caused by the negligence or fault of persons and/or entities for whose conduct Bard is not
26 legally responsible.

TWELFTH AFFIRMATIVE DEFENSE

(Comparative Fault)

12. If the plaintiffs suffered any damages or injuries, which are denied, Bard states that the plaintiffs were guilty of comparative negligence and therefore any recovery should be reduced proportionately.

THIRTEENTH AFFIRMATIVE DEFENSE

(Proportionate Fault)

13. In the further alternative, and only in the event that it is determined that the plaintiffs are entitled to recover against Bard, recovery should be reduced in proportion to the degree or percentage of negligence, fault or exposure to products attributable to the plaintiffs, any other defendants, third party defendants, or other persons, including any party immune because bankruptcy renders them immune from further litigation, as well as any party, co-defendant, or non-parties with whom the plaintiffs have settled or may settle in the future.

FOURTEENTH AFFIRMATIVE DEFENSE

(Intervening/Superseding Cause of Plaintiffs)

14. If the plaintiffs have been damaged, which Bard denies, the negligence or fault of the plaintiffs constitutes the sole, intervening, and superseding cause of the plaintiffs' alleged damages.

SIXTEENTH DEFENSE

(Intervening/Superseding Cause of Third Parties)

15. If the plaintiffs have been damaged, which Bard denies, the negligence or fault of persons and/or entities for whose conduct Bard is not legally responsible constitutes the sole, intervening, and superseding cause of the plaintiffs' alleged damages.

SIXTEENTH AFFIRMATIVE DEFENSE

(Intervening/Superseding Cause of Third Parties)

16. If the plaintiffs have been damaged, which Bard denies, the actions of persons

1 or entities for whose conduct Bard is not legally responsible and the independent knowledge
2 of these persons or entities of the risks inherent in the use of the product and other
3 independent causes, constitute an intervening and superseding cause of the plaintiffs' alleged
4 damages.

5 **SEVENTEENTH AFFIRMATIVE DEFENSE**

6 (Intervening/Superseding Cause)

7 17. If the plaintiffs have been damaged, which Bard denies, such damages were
8 caused by unforeseeable, independent, intervening, and/or superseding events for which
9 Bard is not legally responsible.

10 **EIGHTEENTH AFFIRMATIVE DEFENSE**

11 (Misuse/Modification of the Product)

12 18. If the plaintiffs have been damaged, which Bard denies, such damages were
13 caused by abuse, misuse, user error and/or modification of the product at issue for which
14 Bard was and is in no way liable.

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 (Lack of Warranty/Privity/Reliance)

17 19. Bard made no warranties of any kind, express or implied, including any alleged
18 implied warranty of merchantability or implied warranty of fitness for a particular purpose,
19 or any representations of any nature whatsoever to the plaintiffs. To the extent applicable,
20 the plaintiffs' breach of warranty claims are barred by a lack of privity between the plaintiff
21 and Bard. To the extent the plaintiff makes warranty claims, whether express or implied,
22 the claims are barred or limited by any and all express conditions or disclaimers, by the
23 plaintiffs' lack of reliance on any such warranties, and by waiver.

24 **TWENTIETH AFFIRMATIVE DEFENSE**

25 (Product not used for its Ordinary Purpose)

26 20. The plaintiffs' claims for breach of implied warranty must fail because the
27 product was not used for its ordinary purpose.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Lack of Notice of Warranty Claim)

21. The plaintiffs' claim for breach of warranty is barred because the plaintiffs did not first give notice of any alleged defect of the product to Bard.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Lack of Breach of Duty to Warn)

22. Bard neither had nor breached any alleged duty to warn with respect to the product, with the result that the plaintiffs are not entitled to recover in this cause.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Learned Intermediary)

23. The plaintiffs' failure to warn claims are barred by virtue of the intervention of the learned intermediary or intermediaries to whom Bard discharged its duties to warn.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Federal Preemption)

24. The conduct of Bard and the subject product at all times conformed with the Federal Food, Drug and Cosmetic Act, and other pertinent federal statute and regulations. Accordingly, the plaintiffs' claims are barred, in whole or in part, under the doctrine of federal preemption, and granting the relief requested would impermissibly infringe upon and conflict with federal laws, regulations, and policies in violation of the Supremacy Clause of the United States Constitution.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Intervening/Superseding Cause)

25. The plaintiffs' alleged damages resulted from independent, unforeseeable, superseding, and/or intervening causes unrelated to any conduct of Bard.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Contribution/Indemnity)

26. If the plaintiffs recover from Bard, Bard is entitled to contribution, set-off,

1 and/or indemnification, either in whole or in part, from all persons or entities whose
2 negligence or fault proximately caused or contributed to cause the plaintiffs' alleged
3 damages.

4 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

5 (Release/Offset)

6 27. The plaintiffs' claims are or may be barred, in whole or in part, to the extent
7 that the plaintiffs have released, settled with, entered into an accord and satisfaction, or
8 otherwise compromised their claims. Bard is entitled to a set-off for the entire amount of
9 proceeds the plaintiffs have or may recover from all other sources.

10 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

11 (Collateral Source)

12 28. Should Bard be held liable to the plaintiffs, which liability is specifically
13 denied, Bard would be entitled to a setoff for the total of all amounts paid to the plaintiffs
14 from all collateral sources.

15 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

16 (Restatement (Third) of Torts)

17 29. Bard asserts any and all defenses, claims, credits, offsets, or remedies provided
18 by the Restatement (Third) of Torts and reserves the right to amend its Answer to file such
19 further pleadings as are necessary to preserve and assert such defenses, claims, credits,
20 offsets, or remedies.

21 **THIRTIETH AFFIRMATIVE DEFENSE**

22 (Product was Reasonably Safe and Fit for its Intended Use)

23 30. The product at issue is neither defective nor unreasonably dangerous because it
24 is a medical device falling within what is commonly known as Comment (j), Restatement
25 (Second) of Torts § 402A, and comparable provisions of the Restatement (Third) of Torts
26 (Products Liability), in that the product at issue was, at all times material to the plaintiffs'
27 Complaint, reasonably safe and reasonably fit for its intended use, and the warnings and
28

1 instructions accompanying the product at the time of the occurrence or injuries alleged by the
2 plaintiffs were legally adequate.

3 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

4 (Conformance with State of Knowledge)

5 31. The plaintiffs' claims are barred because the methods, standards, warnings, and
6 instructions used in manufacturing and/or marketing the product at issue conformed with the
7 generally recognized, reasonably available, and reliable state of knowledge when the product
8 was manufactured and marketed.

9 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

10 (Conformance with Industry Standards)

11 32. The plaintiffs' claims are barred because the methods, standards, warnings, and
12 instructions used in manufacturing and/or marketing the product at issue conformed with
13 industry custom/usage standards and/or legislative/administrative/regulatory standards.

14 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

15 (Conformance with Scientific/Technical Knowledge)

16 33. The design complained of in the plaintiffs' Complaint, the alleged defects of
17 the product, and/or any alternative design claimed by the plaintiffs were not known and, in
18 light of the existing, reasonably-available scientific and technological knowledge, could not
19 have been known at the time the product at issue was designed, manufactured, and sold.
20 Any alleged alternative design was not scientifically or technologically feasible or
21 economically practical.

22 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

23 (Uniform Commercial Code)

24 34. Bard specifically pleads all affirmative defenses under the Uniform
25 Commercial Code ("UCC") now existing or which may arise in the future, including those
26 defenses provided by UCC §§ 2-607 and 2-709.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Lack of Malicious/Willful/Fraudulent Conduct)

35. No act or omission of Bard was malicious, willful, wanton, reckless, or grossly negligent, and, therefore, any award of punitive damages is barred.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Limitations on Enforceability of Punitive Damages)

36. To the extent the plaintiffs assert a demand for punitive damages, Bard specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damages awards that arose in the decisions of *BMW of No. America v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); *State Farm Mut. Auto Ins. Co. v. Campbell*, 123 S. Ct. 1513 (2003); and *Exxon Shipping Co. v. Baker*, No. 07-219, 2008 U.S. LEXIS 5263 (U.S. June 25, 2008) and their progeny as well as other similar cases under both federal and state law.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Constitutional Law)

37. To the extent that the plaintiffs assert a claim for punitive damages, that claim is in contravention of the rights of Bard under the following constitutional provisions:

a. Plaintiff's claims for punitive or exemplary damages violate, and are therefore barred by, the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States of America on grounds including the following:

(i) it is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiffs' satisfying a burden of proof

- 1 which is less than the “beyond a reasonable doubt” burden of
2 proof required in criminal cases;
- 3 (ii) the procedures pursuant to which punitive damages are awarded
4 may result in the award of joint and several judgments against
5 multiple defendants for different alleged acts of wrongdoing,
6 which infringes upon the Due Process and Equal Protection
7 Clauses of the Fourteenth Amendment of the United States
8 Constitution;
- 9 (iii) the procedures to which punitive damages are awarded fail to
10 provide a reasonable limit on the amount of the award against
11 defendant, which thereby violates the Due Process Clause of the
12 Fourteenth Amendment of the United States Constitution;
- 13 (iv) the procedures pursuant to which punitive damages are awarded
14 fail to provide specific standards for the amount of the award of
15 punitive damages which thereby violates the Due Process Clause
16 of the Fourteenth Amendment of the United States Constitution;
- 17 (v) the procedures pursuant to which punitive damages are awarded
18 result in the imposition of different penalties for the same or
19 similar acts, and thus violate the Equal Protection Clause of the
20 Fourteenth Amendment of the United States Constitution;
- 21 (vi) the procedures pursuant to which punitive damages are awarded
22 permit the imposition of punitive damages in excess of the
23 maximum criminal fine for the same or similar conduct, which
24 thereby infringes upon the Due Process Clause of the Fifth and
25 Fourteenth Amendments and the Equal Protection Clause of the
26 Fourteenth Amendment of the United States Constitution;
- 27 (vii) the procedures pursuant to which punitive damages are awarded
28

1 permit the imposition of excessive fines in violation of the Eighth
2 Amendment of the United States Constitution;

3 (viii) the award of punitive damages to the plaintiff in this action
4 would constitute a deprivation of property without due process of
5 law; and

6 (ix) the procedures pursuant to which punitive damages are awarded
7 permit the imposition of an excessive fine and penalty.

8 b. The plaintiffs' claims for punitive or exemplary damages violate and are,
9 therefore, barred by the provision of the Constitution of the State of California
10 on grounds including the following:

11 (i) it is a violation of the Due Process and Equal Protection Clauses
12 to impose punitive damages, which are penal in nature, against a
13 civil defendant upon the Plaintiffs satisfying a burden of proof
14 which is less than the "beyond a reasonable doubt" burden of
15 proof required in criminal cases;

16 (ii) the procedures pursuant to which punitive damages are awarded
17 may result in the award of joint and several judgments against
18 multiple defendants for different alleged acts of wrongdoing;

19 (iii) the procedures to which punitive damages are awarded fail to
20 provide a limit on the amount of the award against defendant;

21 (iv) the procedures pursuant to which punitive damages are awarded
22 fail to provide specific standards for the amount of the award of
23 punitive damages;

24 (v) the procedures pursuant to which punitive damages are awarded
25 result in the imposition of different penalties for the same or
26 similar acts;

27 (vi) the procedures pursuant to which punitive damages are awarded
28

- 1 permit the imposition of punitive damages in excess of the
2 maximum criminal fine for the same or similar conduct;
3 (vii) the procedures pursuant to which punitive damages are awarded
4 permit the imposition of excessive fines;
5 (viii) the award of punitive damages to the plaintiff in this action
6 would constitute a deprivation of property without due process of
7 law; and
8 (ix) the procedures pursuant to which punitive damages are awarded
9 permit the imposition of an excessive fine and penalty.

10 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

11 (Reservation of Additional Defenses)

12 38. Bard intends to rely upon any additional affirmative defenses that become
13 available during the course of investigation and/or discovery and reserves the right to amend
14 its Answer to assert these defenses.

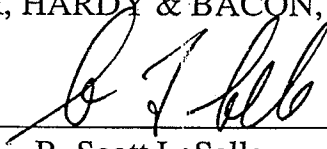
15 **WHEREFORE**, Bard states that the plaintiffs are not entitled to the relief demanded
16 in the Complaint, and this Defendant, having fully answered, prays that this action against it
17 be dismissed and that it be awarded its costs in defending this action and that it be granted
18 such other and further relief as the Court deems just and appropriate.

19 **REQUEST FOR JURY TRIAL**

20 Bard seeks a trial by jury on all issues so triable.

21
22 Dated: June 19, 2009

SHOOK, HARDY & BACON, LLP

23
24 By: 
25 R. Scott LaSalle
26 Attorneys for Defendant C. R. BARD, INC.
27
28

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5 Park Plaza, Suite 1600, Irvine, California 92614.

On June 19, 2009, I served on the interested parties in said action the within:

**DEFENDANT C.R. BARD, INC.'S ANSWER AND DEFENSES
TO PLAINTIFFS' COMPLAINT**

by placing a true copy thereof in a sealed envelope(s) addressed as stated on the attached mailing list.

☒ (MAIL) I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ (FAX) I caused such document(s) to be served via facsimile on the interested parties at their facsimile numbers listed above. The facsimile numbers used complied with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a report of the transmission, a copy of which is attached to the original of this declaration.

☐ (HAND DELIVERY) By placing a true and correct copy of the above document(s) in a sealed envelope addressed as indicated above and causing such envelope(s) to be delivered by hand to the addressee(s) designated.

☐ (BY FEDERAL EXPRESS, AN OVERNIGHT DELIVERY SERVICE) By placing a true and correct copy of the above document(s) in a sealed envelope addressed as indicated above and causing such envelope(s) to be delivered to the FEDERAL EXPRESS Service Center, on _____, to be delivered by their next business day delivery service on _____, to the addressee designated.

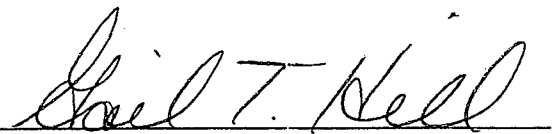
☐ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Shook, Hardy & Bacon L.L.P.'s electronic mail system to the e-mail address(es) as stated on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 19, 2009, at Irvine, California.

Gail T. Hill

(Type or print name)


(Signature)

SERVICE LIST

Robert F. Arentz, Esq.
Lowell W. Finson, Esq.
Phillips & Associates
3030 N. Third St., #1100
Phoenix, AZ 85012

Tel: 602-258-8900

Fax: 602-288-1671

Email: lowellf@phillipslaw.ws

Attorneys for Plaintiffs

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5 Park Plaza, Suite 1600, Irvine, California 92614.

On December 14, 2009 I served on the interested parties in said action the within:

NOTICE OF REMOVAL OF ACTION BY C. R. BARD, INC.

by placing a true copy thereof in a sealed envelope(s) addressed as stated on the attached mailing list.

☒ (MAIL) I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ (FAX) I caused such document(s) to be served via facsimile on the interested parties at their facsimile numbers listed above. The facsimile numbers used complied with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a report of the transmission, a copy of which is attached to the original of this declaration.


☐ (HAND DELIVERY) By placing a true and correct copy of the above document(s) in a sealed envelope addressed as indicated above and causing such envelope(s) to be delivered by hand to the addressee(s) designated.

☐ (BY FEDERAL EXPRESS, AN OVERNIGHT DELIVERY SERVICE) By placing a true and correct copy of the above document(s) in a sealed envelope addressed as indicated above and causing such envelope(s) to be delivered to the FEDERAL EXPRESS Service Center, and for such envelope(s) to be delivered by their next business day delivery service to the addressee designated.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 14, 2009, at Irvine, California.

Kim Brunton
(Type or print name)


(Signature)

SERVICE LIST

Robert F. Arentz, Esq.
Lowell W. Finson, Esq.
Phillips & Associates
20 East Thomas Road, Suite 2600
Phoenix, AZ 85012

Tel: 602-258-8900
Fax: 602-288-1671
Email: lowellf@phillipslaw.ws

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETI (a) PLAINTIFFS (Check box if you are representing yourself ☐)

DEBRA BROUSSARD and ROBERT BROUSSARD

DEFENDANTS

CALDERA MEDICAL, INC., C. R. BARD, INC. and DOES ONE through FIFTEEN

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Robert F. Arentz
Lowell W. Finson
Phillips & Associates
3030 North Third Street, Suite 1100
Phoenix, Arizona 85012
602-258-8900

Attorneys (If Known)

Scott LaSalle (SBN: 188287)
SHOOK, HARDY & BACON, L.L.P.
Jamboree Center
5 Park Plaza, Suite 1600
Irvine, California 92614
949-475-1500

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: ☐ Yes ☐ No☒ MONEY DEMANDED IN COMPLAINT: \$

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Diversity

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS - PERSONAL INJURY	TORTS - PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input checked="" type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923) (405(g))
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 230 Rent Lease & Ejectment				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 240 Torts to Land				<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 245 Tort Product Liability				
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 290 All Other Real Property				
<input type="checkbox"/> 950 Constitutionality of State Statutes					

FOR OFFICE USE ONLY: Case Number:

CV09-9153 DDP(EX)

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Louisiana

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	New Jersey

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Scott LaSalle

Date 12-14-09

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5 Park Plaza, Suite 1600, Irvine, California 92614.

On December 14, 2009 I served on the interested parties in said action the within:

CIVIL CASE COVERSHEET

by placing a true copy thereof in a sealed envelope(s) addressed as stated on the attached mailing list.

☒ (MAIL) I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

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☐ (HAND DELIVERY) By placing a true and correct copy of the above document(s) in a sealed envelope addressed as indicated above and causing such envelope(s) to be delivered by hand to the addressee(s) designated.

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☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 14, 2009, at Irvine, California.

Kim Brunton
(Type or print name)


(Signature)

SERVICE LIST

Robert F. Arentz, Esq.
Lowell W. Finson, Esq.
Phillips & Associates
20 East Thomas Road, Suite 2600
Phoenix, AZ 85012

Tel: 602-258-8900

Fax: 602-288-1671

Email: lowellf@phillipslaw.ws

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dean D. Pregerson and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

CV09- 9153 DDP (Ex)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.